SUPREME COURT OF THE UNITED STATES.

No. 269.

THE STEAMBOAT BELFAST, B. C. NELSON AND A. F. HARTEL, CLAIMANTS, PLAINTIFFS IN ERROR,

vs.

BOON & COMPANY, J. H. & S. B. STEERS, AND JOHN WATSON & CO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ALABAMA.

INDEX.

		Original.	Print.
Petition for writ of error		*a*	1
Writ of error		*b*	1
Bond		*c*	2
Citation		*d*	3
Libel of Boon & Co.	Page	1	5
Writ of seizure	"	2	6
Monition	"	3	6
Answer of respondents	"	4	7
Exceptions to answer	"	11	12
Amended Answer	"	12	13
Exceptions to amendedment	"	13	13
Amended answer	"	14	14
Issue	"	14	14
Amended answer	"	14	14
Agreement as to facts	"	15	15
Exception to amendment	"	16	16
2nd amendment	"	16	16
Exception to 2nd amendment	"	18	17
Decree	"	18	17
Appeal bond and citation	"	20	18
Libel of J. H. & S. B. Steers	"	22	20
Writ of seizure, &c.	"	23	21

		Original.	Print.
Answer	"	24	22
Protest to jurisdiction	"	29	25
Appeal bond and citation	"	30	26
Libel of J. Watson & Co.	"	33	27
Writ of seizure, &c.	"	34	28
Answer	"	36	29
Certificate of appeal and bond	"	41	32
Citation	"	42	33
Bill of exceptions	"	44	34
Exhibit A	"	48	36
Exhibit B	"	49	37
Exhibit C	"	50	38
Exhibit D	"	51	39
Exhibit E	"	52	39
Exhibit F	"	53	40
Exhibit G	"	54	40
Exhibit H	"	55	41
Exhibit I	"	63	46
Exhibit J	"	72	52
Exhibit M	"	80	57
Exhibit W	"	81	58
Clerk's certificate	"	84	60
Endorsement clerk of Supreme Court	"	84	60
Assignment of errors	"	84	60
Submission of cause	"	85	60
Judgment of Supreme Court	"	93	66
Re-hearing (application for)	"	99	69
Clerk Supreme Court, certificate	"	99	69
Opinion of Supreme Court	"	85	61
Opinion (continuation)	"	94	66

a To the Hon. A. J. WALKER,
Chief Justice of the Supreme Court of Alabama:

The petition of A. F. Hurtel and B. C. Nelson, def'ts in the case of Boone & Co., et al, decided by the Supreme Court of Alabama, on the 6th day of June, 1867, affirming the decree in favor of Boone & Co. et al, against the Belfast et al; that same decree is final; that there was drawn in question the validity of an act of the legislature of Alabama, approved October 7th, 1864, which was contested by appellants because the same is repugnant to the third sub-division of section eight of the Constitution of the United States, also repugnant to the 2d section of the third article of the Constitution of the United States; that said decision is adverse to the claim of petitioners as appears of record.

Your petitioners therefore pray unto your honor to grant unto them a writ of error returnable to the next term of the Supreme Court of the United States. So in duty bound they will ever pray.

W. BOYLES,
Of counsel for Petitioner.

Presented and allowed, June 6th, 1867.

A. J. WALKER, *C. J.*

b UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the Judges of the Supreme Court of Alabama, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said Supreme Court before you, being the highest court of law of the State of Alabama, in which a decision could be had in the said suit between said Boone & Co. et al, as libellants, and the steamboat Belfast, and A. F. Hurtel, and B. C. Nelson, respondents and claimants of said boat, wherein was drawn in question the validity of a statute of the State of Alabama, approved the 7th day of October, 1864, on the ground that it is repugnant to the third sub-division of section eight of the Constitution of the United States; also repugnant to the second section of the third article of the Constitution of the United States, and the said decision was in favor of the validity of said act of the legislature of the State of Alabama, approved the 7th of October, A. D. 1864; and that the decision was against said third sub-division of section eight of the Constitution of the United States; also repugnant to the second section of the third article of the Constitution of the United States, a manifest error hath happened to the great damage of said A. F. Hurtel and B. C. Nelson, claimants and respondants, as by their complaint appears, he being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the

United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

SALMON P. CHASE.

Witness, the Honorable Salmon P. Chase, Chief Justice of said Supreme Court, the 6th day of June, A. D. 1867, in the year of our Lord one thousand eight hundred and sixty-seven.

[SEAL.] LAWRENCE WORRALL,
Clerk of the United States Circuit Court for the fifth circuit and the southern district of Alabama.

[50-cent internal revenue stamp.]

Allowed June 6th, 1867.

A. J. WALKER, *C. J.*

(Copy.)

Know all men by these presents, that we, Ben. C. Nelson, and A. F. Hurtel, owners of the steamboat "Belfast," and M. Waring, surety, are held and firmly bound unto the firm of Boon & Co., the firm of J. H. & S. B. Steers, and the firm of John Watson & Co., in the just and full sum of five hundred dollars, (500,) to be paid to the said above-mentioned firms, or partnerships, their executors, admintrators, or assigns; to which payment we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 25th day of June, A.D. 1867.

Whereas, lately, at a term of the Supreme Court of Alabama, begun and held on the first Monday of June, A. D. 1867, in a suit by appeal, depending in said court, between the steamboat Belfast and the said Boon & Co. *et als*, a decree was rendered affirming a decree before that time rendered by the City Court of Mobile in favor of said Boon & Co. *et als*, against the said steamboat "Belfast," (the said Ben. C. Nelson, and A. F. Hurtel, being intervenors and appellants,) and for costs against them, and Charles Briggs and Frank David, their sureties on appeal bonds; and the said Ben. C. Nelson and A. F. Hurtel, having obtained a writ of error, and filed a copy thereof in the clerk's office of the said Supreme Court, to reverse the decree in the aforesaid suit, and a citation directed to the said Boon & Co., J. H. & S. B. Steers, and John Watson & Co., citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next:

Now, the condition of this obligation is such, that if the said Ben. C. Nelson and A. F. Hurtel, as owners of said steamboat "Belfast,"

and "intervenors," in that behalf, shall prosecute the said writ of error to effect and answer all damages and costs, if they fail to make their said plea good, then the above obligation to be void, else to remain in full force and virtue.

BEN. C. NELSON. [SEAL.]
By A. F. HURTEL, [SEAL.]
His attorney in fact.
A. F. HURTEL. [SEAL.]
M. WARING. [SEAL.]

Sealed and delivered in presence of—
(Signed) W. BOYLES.
June 27th, 1867.

Approved by—
(Signed) A. J. WALKER,
C. J. Supreme Court of the State of Alabama.

STATE OF ALABAMA, *Mobile County:*

I, George W. Bond, Judge of Probate for said county, do hereby certify that Moses Waring, whose genuine signature appears to the foregoing bond is personally known to me, and that he is ample security for the amount of said bond, and I further certify that I would not hesitate to take said Waring as surety on a bond for the sum of fifty thousand dollars.

Given under my hand and the seal of said court at office in the city of Mobile, this 25th day of June, A. D. 1867.

[SEAL.] (Signed) GEO. W. BOND, *Judge.*

[One dollar State stamp, cancelled.]

I, John D. Phelan, Clerk of the Supreme Court of the State of Alabama, hereby certify that the foregoing, on pages 1 and 2, is a true and perfect copy of the original writ of error bond filed in my office, on the 27th day of June, A. D. 1867, in the case of the steamboat Belfast *vs.* Boon & Co. *et al*, 1 div. 3,316, which said original writ of error bond is now on file in my office.

Witness, John D. Phelan, Clerk of said court, this 23d day of October, A. D. 1867.

JNO. D. PHELAN, *Clerk.*

Endorsed: 1 div. 3,316. Steamboat "Belfast" *vs.* Boon & Co. *et al.* Writ of error bond. Filed June 27th, 1867. (Signed) Jno. D. Phelan, Clerk Sup. Co. of Ala.

d The United States of America, to Boon & Co., J. H. & S. B. Steers, John Watson & Co., or Dargan & Taylor, their attorneys of record, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed i

in the clerk's office of the Supreme Court of the State of Alabama, wherein the seamboat "Belfast," Ben. C. Nelson and A. F. Hurtel, being owners and intervenors, is plaintiff in error, and you are the defendants in error, to show cause, if any there be, why the said judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Hon. A. J. Walker, Chief Justice of the Supreme Court of the State of Alabama, this 1st day of July, in the year of our Lord one thousand eight hundred and sixty-seven.

A. J. WALKER,
Chief Justice of the Supreme Court of Alabama.

On this sixth day of July, A. D. 1867, personally appeared Henry T. Gaines, a deputy sheriff of Mobile Co., Ala., before me the subscriber, W. W. D. Turner, a U. S. Commissioner for the southern district to Alabama, and makes oath that he delivered three true copies of the within citation, to Dargan and Taylor, attorney of record for the defendants in error in the within case.

HENRY T. GAINES.

Sworn to and subscribed the 6th day of July, A. D. 1867.

W. W. D. TURNER,
U. S. Commissioner, Southern Dist. of Ala.

Rec'd 6 July, 1867, and on the same day, I served copies of the within citation in error on Edmund S. Dargan and John T. Taylor, Esq.

M. D. GRINNELL,
Sh'ff, Mobile County.
By HENRY T. GAINES, *D. S.*

Endorsed: Steamboat "Belfast" *vs.* Boon & Co. *et als.* Citation in error.

1 Be it remembered, that at a term of the Supreme Court of Alabama, begun and held at the capitol, in the city of Montgomery, on Monday, the third day of June, in the year of our Lord one thousand eight hundred and sixty-seven, there were present and presiding as judges of said court, Honorable Abram J. Walker, Chief Justice; Honorable Wm. M. Byrd, associate justice; Honorable Thomas J. Judge, associate justice, before whom the following proceedings were had, to wit:

There was filed in the office of the clerk of said Supreme Court, on the 15th day of January, A. D. 1867, the following transcript of the record and proceedings in the cases of Boon & Co., plaintiffs, *vs.* Steamboat Belfast, defendant; of J. H. & S. B. Steers, plaintiffs, *vs.* the same; and of John Watson & Co., plaintiffs, *vs.* the same, (which three said cases were tried conjointly,) from the City Court of Mobile, in said State, sitting in admiralty, in the words and figures following, to wit:

Transcript of the proceedings of the City Court of Mobile, sitting in admiralty, had in the causes of Boon & Co. *vs.* Steamboat Belfast; of J. H. & S. B. Steers *vs.* Steamboat Belfast; and of John Watson & Co. *versus* Steamboat Belfast, tried conjointly.

Libel of Boon & Co.

To the Honorable HENRY CHAMBERLAIN,
Judge of the City Court of Mobile County.

The libel and complaint of W. C. Boon, H. K. Love, E. H. Taylor, and U. S. Boon, partners under the name of Boon & Co., against the steamer Belfast, now lying at the port of Mobile, her tackle, apparel, and furniture, whereof Henry Taylor is master, and against all persons intervening for their interest in said boat, would respectfully show:

1st. That on or about the 23d day of January, 1866, your libellants shipped on board said steamboat Belfast, which was a common carrier, then lying at Vienna, in the State of Alabama, by
2 U. S. Boon, one of the libellants, acting for himself and said firm, one hundred bales of cotton, the property of libellants, said steamboat at the time being a common carrier, to be transported from Vienna to Mobile, and at Mobile to be delivered to John E. Curran & Co., consignees, they paying freight therefor at the rate of five dollars per bale, the dangers of the river excepted.

2nd. Your libellants further allege, that on the way down the river, on the Tombigby river, below Vienna, in the State of Alabama, twenty-nine bales of said cotton was lost, not by the dangers of the river, and was never delivered in Mobile, whereby your libellants have suffered loss to the extent of fifty-eight hundred dollars.

Therefore, your libellants pray process in admiralty against said steamboat Belfast, her tackle, apparel, and furniture, and that said boat, her tackle, apparel, and furniture, and all persons intervening for their interest therein, be condemned to satisfy the damages aforesaid, and all costs of this libel.

U. S. BOON,
One of the firm of Boon & Co.
DARGAN & TAYLOR,
Proctors.

Security for costs.

I hereby acknowledge myself security for costs in this suit. Witness my hand, this 30th day of March, 1866.

JOHN E. CURRAN.

Affidavit.

THE STATE OF ALABAMA, *Mobile County*:

Personally appeared before me, P. La Vergy, clerk of the City Court of Mobile, U. S. Boon, who, being duly sworn, says on oath that the several allegations in the above libel and complaint subscribed by him are true in substance and in fact. Witness my hand this 30th day of March, A. D. 1866.

Attest: P. LA VERGY, *Clerk.*

Writ of seizure.

The State of Alabama to any sheriff of the State of Alabama, greeting:

Whereas, W. C. Boon, H. K. Love, U. S. Boon, and E. H. Taylor, jr., partners under the name and style of Boon & Co., have this day filed a libel and complaint in the City Court of Mobile, for Mobile County, against the steamboat called the Belfast, her tackle,
3 apparel, and furniture, of which Henry Taylor is, or was lately master, alleging that the said steamboat Belfast is indebted to said Boon & Co. in the sum of fifty-eight hundred dollars, due on the day of January, 1866, for twenty-nine bales of cotton shipped by them on board said steamboat, and not delivered, as set forth in the libel and complaint filed in this case, which said complaint has been sworn to:

Now, therefore, you are hereby commanded to seize and take into your possession the said steamboat Belfast, her tackle, and apparel, and furniture, and hold her until released by due course of law.

Witness, P. La Vergy, Clerk of said court, this 30th day of March, in the year of our Lord one thousand eight hundred and sixty-six.

Issued 30th day of March, 1866.

Attest: P. LA VERGY, *Clerk.*

Sheriff's return.

Received March 30th, 1866, and on the same day I seized and took into my possession the steamboat Belfast, her tackle, apparel, and furniture; and on the 2d day of April, 1866, I posted copies of the monition, which is hereto attached, on the said steamboat and at the court-house door, and I now have said boat in my possession.

M. D. GRINNELL,
Sheriff of Mobile Co.,
By JEROME ESLAVA, *D. S.*

Monition.

BOON & CO.
vs.
ST'B'T BELFAST. } Libel in admirality.

THE STATE OF ALABAMA, *Mobile County*:

Public notice is hereby given, that by virtue of a writ of seizure issued in the above-stated case from the City Court of Mobile, at the instance of the said Boon & Co., libellants, which said writ is returnable according to law, I did, on the 30th day of March, 1866, seize and take into my possession the said st'b't Belfast, her tackle apparel, and furniture, which I now hold subject to the decree which may be rendered in said cause by said court.

4 Parties in interest are hereby notified accordingly.

March 31, 1866.

Attest: M. D. GRINNELL,
Sheriff Mobile County.

Answer of respondents.

City Court of Mobile, in admiralty, first Monday in May, 1866.

To the Honorable HENRY CHAMBERLAIN,
Judge of the City Court of Mobile:

And now, Ben. C. Nelson and A. F. Hurtel, intervening for their interest in the steamer Belfast, appear before this hon. court, and for answer to libel and complaint of W. C. Boon, A. K. Love, U. S. Boon, and E. H. Taylor, jr., partners under the name of Boon & Co., against the steamboat Belfast, now lying at the port of Mobile, her tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein, allege and articulately propound as follows:

First. That respondents are the owners of the said steamboat Belfast, and were the owners of said boat on the 20th of January, 1866, and up to and until the present time; that McHenry Taylor was capt. of said boat on the 21st of January, 1866, and continued to be until said boat was libelled and tied up, to wit, on the day of .

Second. Respondent are informed that one U. S. Boon, at Vienna, on the 23d of January, 1866, shipped one hundred bales of cotton on board said boat to J. E. Curran & Co., in Mobile, at and for the price of five dollars per bale as freight; that bills of lading were given therefor by S. Goodall, as clerk of said boat.

Third. Respondents are informed that said boat left Columbus for Mobile on the morning of the 22d of Jan'y, 1866; that said boat descended said river until she reached a point abou five miles below Coffeeville, at Malone's gin, at which time she had on board a number of passengers, and five hundred and ninety-five bales of cotton consigned to different firms in Mobile; that near said gin-house, between 9 and 10 o'clock p. m., on the 25th day of January, 1866, a party of men on the east bank of the river hailed said boat with a light, as is usual, on said river. The capt., who was at the wheel at the time, had the engine stopped, and asked what was wanted. They replied they had freight to go on board. The capt. informed them he could not take any more freight. They then informed the capt. that there were passengers to go on board. The capt. informed them that he could not accommodate any more passengers. By this time said boat was within twenty or thirty yards of the bank, when about twenty armed men cocked their guns and levelled them at the boat, and said to the capt. that if he did not land the boat, that they would fire into her. Being satisfied that the threat would be carried into execution, and fearing a destruction of life and property, and hoping to save said boat and cargo, the capt. landed said boat as ordered, when a man by the name of Britton came aboard, and asked if there were any Yankees aboard. The capt. said that there were no Yankees aboard that he knew of. Britton then demanded the surrender of the boat. He replied that she would not be surrendered, when Britton cried out, "Boys, come aboard," when about twenty armed men came aboard, all disguised

by having their faces blacked. Britton again demanded the surrender of the boat. The capt. refused to surrender, and was then surrounded by said armed men and arrested by them. The capt. was then ordered by Britton to go to the wheel. The capt. replied that he would die first. They then marched the capt. to his office, made him go into the office and locked the door, and put an armed guard over him, and took forcible possession of said boat, cotton, &c.

Fourth. Respondents are informed that an armed body of men went to E. H. Gordy, the pilot, and compelled him, by force, to go to the wheel, and the engineers were likewise compelled to get up steam on said boat, by said armed men, and said boat was started down the river; that said armed men put off cotton at different places on the river, as the boat went down; that said boat was taken into the cut off by said armed men, as aforesaid, on Sunday morning, the 28th of January, 1866. She was there tied up until near night, and then started up the river, and about 8 o'clock, p. m., at the lower end of McIntosh's Bluff, the boat was landed and the
6 capt. driven ashore, by said armed men, that said boat was then moved up the river, a distance of about eight miles, where both the clerks were driven ashore. The said boat was then moved up the river to a place called Beckham's Landing, where another lot of cotton was put off, the said boat was then turned over and delivered to the mate and pilot. The said boat was then rounded to to go down the river, but as she rounded to she was fired into by a party on shore; several of the shot or balls passed through the pilot house; the said boat was landed and inquiry made as to why she was fired into, to which the parties on shore replied, that they thought the persons on said boat wanted to steal the cotton on the bank; said boat was then started down the river, took on the clerks and then the capt., when she was put under charge of the capt., who moved a short distance below, to the mouth of the bayou, just above the junctions of the rivers, when he found the steamboat Marengo taking a portion of the cotton that had been put off the Belfast; that in a short time a gun-boat of the United States came up, under charge of an officer of the United States; that said officer took charge of said steamer Belfast, and ordered the capt. to go up the river to Paine's Landing, and to take on board all the cotton that could be found that had been taken from the Belfast. This was done, and the said boat then proceeded to Mobile under charge of said United States officer. That said boat reached Mobile on morning of the 31st of January, 1866; that Capt. Taylor, and the officers of said boat afterwards entered a protest in due form, a copy of which is hereto attached and marked exhibit (A,) and made a part of this answer; the original will be produced on the trial if required. That the whole matter was investigated by the military authorities in pursuance of an order of Major Gen'l C. R. Wood, commanding the district of Alabama. That the officers of said boat were discharged and those who committed the robbery kept or held for trial. That some of them have been convicted for robbing said boat, and sentenced, and others held under bond for trial. All the evidence, proceedings, &c., will be exhibited to this honorable court, if required.

Fifth. Respondents are informed that said steamboat was delivered by the military authorities to Charles Briggs & Co., as
7 the agents of the owners on the evening of the 31st of January, 1866. That all the cotton shipped on said boat at Columbus and intermediate landings aforesaid, was then and at different times since, delivered to the different consignees thereof, except from thirty-eight to forty-three bales; that there are two others cases pending in this honorable court against said boat for cotton said to have been lost on said downward trip, as aforesaid; one for the value of thirty bales, and for the value of thirty-four bales.

Sixth. Respondents are informed that on the 9th day of February, fifty-nine bales of said cotton, which had been recaptured, after it had been taken from said steamer Belfast, was turned over and delivered by Charles Briggs, & Co., as agents of said boat; that owing to the fact that the marks on the cotton had been defaced, and in some instances the bagging partly cut-off, that it was agreed that it would be received and distributed among the consignees, pro rata; that a copy of said receipt is hereto attached and marked exhibit (B,) and is made a part of this answer. The original will be produced upon the trial if required.

Seventh. Respondents are informed that the tide ebbs and flows some distance above the point where said boat was captured as aforesaid; that the officers and crew had no arms, but acted in good faith and did all in their power to save said boat and cargo. That said boat and cargo was captured by a number of lawless, roving robbers at a point on the Bigbee river, where the tide ebbs and flows, and within the admiralty jurisdiction of the United States. That by an act of the Congress of the United States, said act of robbery is declared to be piracy, and that the boat nor owners are liable for the act as aforesaid if the officers and crew acted in good faith, and did all in their power to save said boat and cargo.

Eighth. Respondents are informed that it is the universal practice and understanding amongst steamboat men, navigating the waters of the Bigbee river, that when cotton is received by a boat, to be transported to Mobile, if she should be captured by an armed force, without any fault or neglect of the officers and crew, that in such cases, the boat nor owners are liable for such loss.

Ninth. That all and singular the premises are true, as respondents are informed and believes, in verification whereof if denied, respondents crave leave to refer to the depositions and
8 other proofs to be by them exhibited in this cause.

Wherefore, respondents pray that this hon. court would be pleased to pronounce against the libel aforesaid, and to condemn the libellants, in costs, and otherwise right and justice administer in the premises.

(Signed) A. F. HURTEL.
BOYLES & OVERALL,
Proctors for Respondents.

Sworn to by A. F. Hurtel, one of the respondents, before me, this 1st day of May, A. D. 1866. P. LA VERGY, *Clerk.*

Exhibit (A.)

STATE OF ALABAMA,
County and City of Mobile, ss:

By this public instrument of declaration and protest, be it made known and manifest, to all whom it may concern, that on the twentieth day of February, in the year of our Lord, one thousand eight hundred and sixty-six, before me, Joshua S. Secor, public notary in and for the county of Mobile, in the State of Alabama, duly and by lawful authority commissioned and qualified, and residing in the city of Mobile and State aforesaid, personally appeared, M. H. Taylor, master of the steamboat Belfast, of Mobile, and noted with me in due form of law, his protest for the uses and purposes hereinafter mentioned; and now, on this day, to wit, the third day of April, in the year 1866, before me, the said notary, again comes the said M. H. Taylor, and requires me to extend his said protest, and together with him, come and appear, E. H. Gordy, pilot, W. E. Patterson, second engineer, and H. S. Chamberlain, 1st engineer, and P. S. Taylor, carpenter, all belonging to the aforesaid steamer, all of whom being by me severally, duly, solemnly sworn, on the Holy Evangelist of Almighty, voluntarily and freely, and depose and say, that the said steamer, laden with cotton, sailed from Columbus, Miss., on the 23d day of January last, bound for Mobile, and proceeded down the Tombickbe without any thing unusual occuring, until between 9 and ten o'clock, p. m., January 25th, when said steamer was 9 opposite Malone's gin-house, about five miles below Coffeeville, the master was hailed from the opposite shore, and asked first to land and take cotton, and on being told that the boat was loaded, asked that she would land and take passengers, and being answered that the boat had no accommodation for them, the master was ordered in a very peremptory manner to land the boat.

Having no means of protecting the boat, the master deemed it best to land, supposing that as the cargo of cotton all belonged to private parties, and not the U. S. government, the men, who he supposed to be guerrillas, would not disturb it and he accordingly run her into shore. She was at once boarded by a man who examined the bills of lading for the cotton, and although he found no government cotton, he determined upon unloading the boat, and called his companions on board, twelve or fifteen in number. He then ordered the master to the wheel, who refusing, the pilot was sent to the wheel under a guard, and they locked the master in his room. The steamer was then run down about half a mile, when she was landed, and a quantity of cotton was landed. She was then run down to the mouth of Hatchatigby lake, and more cotton was landed; she was then run to Beckham's Landing, and more cotton was landed; from thence she was taken to Corney's Bluff, and more cotton landed; then to Payne's wood-yard, and from thence to a bayou just above the junction of the Alabama and Tombeckbe rivers, and cotton was landed at each place. This occupied all the time, until the morning

of the 28th, when she was started back up the river, and taken into the cut-off, where she remained all that day, and just at night came out of the cut-off and proceeded up to Payne's wood-yard, having ordered and compelled the master to go ashore at McIntosh's bluff. At about two o'clock on the morning of the 29th, they released the boat to the mate. Between 8 and 9 a. m. the master rejoined the boat at McIntosh's bluff, and proceeded to the mouth of the bayou above spoken of, and found the steamer Marengo taking on board the cotton landed from the Belfast. While there, a gunboat came up, and her officers took charge of both steamers; ordered the Belfast back up the river, where she recovered one hundred bales cotton at Payne's wood-yard, returned to the bayou, found the Marengo gone; took on twenty-eight bales left by the Marengo, and proceeded to Mobile, in the custody of the gun-boat, and arrived on the 30th.

And the said deponents, on their oaths, declare that the said steamer was, at the commencement of the voyage aforesaid, staunch and strong, and had her cargo well and sufficently closed, and her hatches properly closed and secured, and that during the said voyage they, together with the rest of the crew on board, used their utmost endeavors to preserve the said steamer and her cargo, tackle and apparel from damage or injury. And that any loss, damage or injury which has arisen or accrued, or that may arise or be sustained, in any way or manner whatever, is solely owing to the accidents and difficulties herein set forth and declared, and not to any negligence, want of skill, vigilance or exertion on the part of the deponents or any of the officers or men of the said steamer.

(Signed) M. H. TAYLOR,
E. H. GORDY, *Pilot*,
W. B. PATTERSON, *2d Engineer*,
A. S. CHAMBERLAIN, *1st Engineer*,
P. S. TAYLOR, *Carpenter*.

Wherefore, the said M. H. Taylor, master and commander as aforesaid, hath requested me to protest, and I, the said notary, at such his request, have protested, and by these presents do publicly and solemnly protest against all and every person and persons whom it doth, shall, or may concern, and against all singular the accidents, casualties and circumstances already set forth in the foregoing declaration on oath, for all manner of losses, costs, damages, charges, expenses, and injuries whatever, which the said steamer and her cargo on board, and the freight by her earned, or either of them, or any part thereof, have already sustained, or may hereafter sustain, by reason or means of the foregoing premises.

This done and protested in the city of Mobile, this third day of April, in the year of our Lord one thousand eight hundred and sixty-six.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal.

J. S. SECOR, *Notary*.

11 *Exhibit B.*

Received, Mobile, February eighth, of Messrs. Charles Briggs & Co., an order on shippers warehouse, for fiftv-nine bales of cotton, which order is in favor of William J. Ledyard and John E. Curran. Said delivery is a good delivery as to said cotton by said Briggs & Co., to each and all of us as consignees of cotton by steamer Belfast, of which steamer said Briggs & Co. are consignees and agents; and we hereby agree that said Ledyard & Curran shall receive the cotton for and on account of each of us, and that they shall make a pro rata distribution thereof among us, according to our respective interests as consignees, owing to the fact that the marks have been so disfigured, as to rendar it impossible to determine which particular cotton belongs to each of the undersigned; and we agree that said Ledyard & Curran shall pay, and bind ourselves that they shall pay the freight, charges, and expenses that have accrued on said cotton, from the proc ds of the cotton.

(Signed) TARLETON, LEDYARD & CO.
JOHN E. CURRAN & CO.
BAKER, GRAHAM & CO.
WHITFIELD, BILLUPS & CO.
W. H. LEIMKAUP & CO.
FOSTER & GARDNER.

Exceptions to Answer.

City Court of Mobile.

BOON, libellant,
vs.
THE STEAMER BELFAST, HARTEL et al., claimants.

And now comes the libellant, Boon, and excepts to all that portion of the answer of the claimants that sets forth the loss of the cotton by the seizure and robbery of the boat by robbers, because the libellant says, that though the cotton was lost in the manner stated, by robbery and the seizure of the boat, still the owners and the boat are liable for such loss, and therefore such defensive allegations are insufficient in law to bar the libel, or prevent the relief prayed.

12 And for a further exception, the libellant says, that the portion of the answer which sets up a custom that boats trading or navigating the rivers of this State are not liable for highway or forcible robbery, is insufficient in law to bar the libel or prevent the relief thereby sought, because the alleged custom, if it exists, is contrary alike to the contract described in the libel, to the laws of the country and to public policy; therefore, the libellant excepts to that portion of the answer which sets up the custom, as therein stated by way of defensive allegation.

DARGAN & TAYLOR,
For Libellants.

Amended Answer.

In Admiralty in the City Court of Mobile.

J. H. & J. B. STEERS
vs.
THE STEAMBOAT BELFAST.

Amended answer to apply to each of three answers, by leave of the court first had and obtained.

That it is the universal practice and understanding amongst all persons navigating the waters of the Tombigbee river, and of all persons shipping cotton on said river to Mobile, that when cotton is received on board of a steamboat to be transported to Mobile, that if the boat is captured by armed men, and the cotton thereby lost to the owner, or owners, without any fault or neglect of the officers or crew of the boat, that in such case, neither the boat nor owners of the boat are liable for said loss. The said practice and understanding is general and universally known to all persons navigating said river, and to all persons who ship cotton on said river to Mobile. That is, that said custom is general, universal and uniform, and known to all persons navigating said river, and all persons shipping cotton upon said river. That said custom existed at the time of the contract of shipment was made, and before that time, to all persons who were engaged in shipping cotton on said river to Mobile, and to all persons navigating said river.

13 That respondents are informed that it was agreed by and and between the libellants and the capt. of said boat, at the time said cotton was shipped, and at the time the said bill of lading was signed, that if the boat should be captured by armed guerrillas, and the cotton thereby lost to the owner or owners, without any fault or neglect of the officers or crew of said boat, that in such case neither the boat nor owners were to be liable for such loss; that such loss was to be borne by said owners of said cotton.

W. BOYLES,
Of Counsel for Resp'd'ts.

By consent the foregoing amendment is to apply to the cases of Boon & Co. *vs.* Steamer Belfast, and J. H. Watson & Co. *vs.* Steamer Belfast.

Exceptions to amended answer.

The libellants come and except to that portion of the amended answer that sets up an agreement between the capt. of the boat and the shipper of the cotton. That should said boat be robbed by guerrillas or armed men, that then neither the boat nor the owners should be liable for the loss, because such agreement is not alleged to be in writing, but exists in parol only, and such an agreement would be to add a new term to the written contract, therefore libel-

lants except thereto, and say it is insufficient in law to bar the libel.

DARGAN & TAYLOR,
For Libellants.

2nd. They also except to that portion of the answer which sets up a usage, to the effect that loss by robbery without the default of the capt. and crew, exempts the boat and owners from liability for such loss, because they say that such custom is in direct conflict with the law, and as it is alleged in the answer, is no bar to the libel.

DARGAN & TAYLOR,
For Libellants.

14 *Amended answer.*

Amended answer to each of the answers put in by the owners of the Belfast.

That said agreement was in strict accordance with the universal practice and understanding among persons navigating the waters of the Tombigbee, and all persons shipping cotton on said river to Mobile, and known at the time to the parties shipping said cotton; and that said bill of lading would not have been given without inserting said agreement, but for the reason that it was the universal practice and understanding as aforesaid, when said contract was made, not to insert it, as aforesaid.

This amendment allowed by the court.

W. BOYLES,
Of Counsel for Respondents.

Issue.

The court overruled the exception as to the custom pleaded, to which the libellants excepted; but the court sustained the exception as to the agreement, that it was understood at the time of signing the bill of lading; it was agreed that if the cotton was lost by robbery of guerrillas, the boat should not be liable therefor, as stated in the amended answers.

The libellants take issue on the allegations of the custom, also issue on that part of the answer which denies the loss of the cotton, as alleged in the libel.

DARGAN & TAYLOR.

Amended answer.

Amended answer filed by leave of the court, first had and obtained in the case of Boone & Co. *vs.* Steamboat Belfast, the said amended answer to apply, by consent, to two other cases pending upon the same issue, to wit: Steers & Co., and Watson & Co. against said boat.

Respondents for answer to said libel against said steamboat, Belfast, say, that at the time said cotton was shipped on said boat, by said libellants, said boat was engaged in navigation and commerce between the city of Mobile, in the State of Alabama, and the
15 city of Columbus, in the State of Mississippi. That said boat is an American vessel, built at Fredonia, in the State of Pennsylvania, and was duly enrolled and licensed in pursuance of the laws of the United States of America, at the port of Mobile, on the 11th day of October, 1865.

That on the 15th day of January, 1866, she was regularly cleared at the port of Mobile, in the State of Alabama, for Columbus, in the State of Mississippi, and was regularly engaged in navigation and commerce between the city of Mobile, in the State of Alabama, and the city of Columbus, in the State of Mississippi. That on her downward trip from Columbus, in the State of Mississippi, engaged in navigation and commerce as aforesaid, the said cotton, the subject matter of said libel, was lost, to wit, about the 25th day of January, A. D. 1866.

That after said boat returned to Mobile, in the State of Alabama, she was again regularly cleared at the port of Mobile, in the State of Alabama, for the city of Columbus, in the State of Mississippi, to wit, on the third day of February, A. D. 1866, but before she left she was libeled in the above-stated cause, and others, in the City Court of Mobile.

Respondents submit that said license and enrollment are still in full force, and will be produced, with certified copies of the clearances, &c., if required by this hon. court; and respondents submit that this hon. court has no jurisdiction of said cause, and prays that the same may be dismissed.

(Signed) A. F. HURTEL.

Sworn to and subscribed before me by A. F. Hurtel, this 21st of July, 1866.

P. LA VERGY, *Clerk.*

Agreement as to facts.

It is agreed that this amendment be made to the plea of jurisdiction. The robbery of the Belfast took place on the Tombigby river, in the State of Alabama; and further, that the cotton of Boon & Co. on the same trip was shipped on board said boat in Pickens County, Ala., and the cotton of Steers, and also of Watson & Co., was shipped at Columbus, Miss., to be delivered at Mobile. And this
16 plea with this addition is to apply to all three cases above enumerated.

BOYLES & OVERALL,
Att'ys for Defts.
DARGAN & TAYLOR,
Att'ys for Libellants.

Exception.

And the libellants now come and except to the plea of jurisdiction, and say, that it is insufficient to bar or deprive this court of jurisdiction, or the right to hear and try the cause, and therefore he says, that said plea or whatever it should be called, whether by the name of plea, or otherwise, is insufficient to deprive this court of jurisdiction.

DARGAN & TAYLOR,
For Libellants.

2nd Amendment.

Amended answer filed by leave of the court, first had and obtained in the case of Boon & Co. *vs.* Steamboat Belfast and owners, the said amended answer to apply to two other cases pending upon the same issues, by consent, to wit, Steers & Co., and J. H. Watson & Co, against said steamboat Belfast and owners.

1st. Respondents say, they are informed and believe that it was agreed and understood by and between the capt. of said boat and the libellants, at the time the said bills of lading were made, and said cotton was shipped on said boat, that if said boat was captured and robbed on her downward trip to Mobile, by an armed body of men, without any fault or neglect on the part of the officers and crew of said boat, and said cotton should thereby be lost, that such loss was to be borne by the owner of said cotton, and neither the said boat nor owners were to be liable for said loss; that said agreement would have been reduced to writing and incorporated in said bills of lading given for said cotton, but for the reason that said capt. was led to believe, and did believe, from the representations of libellants that a custom prevailed on said river that made it unnecessary to incorporate said agreement in said bill of lading; that is to say, that libellants represented to said capt. that, in point of fact, such a custom did exist on said river, and said capt. believed said representation to be true, and received said cotton and caused said bills
17 of lading to be given for it as aforesaid, without incorporating in the bills of lading as aforesaid said agreements; that this would not have been done, but for said representation as aforesaid by said libellants. That the Supreme Court of Alabama has since, as respondents are informed, decided in effect, that in point of fact no such custom existed or could exist, because to establish it by proof would be to contradict the written contract.

Respondents therefore insist that said contract was entered into by mistake of facts, to wit: as to the existence of such a custom as aforesaid, at the time said cotton was shipped and said contract was made as aforesaid, and at the time said bills of lading were given as aforesaid.

2nd. Respondents further answering, insist that said bills of lading were obtained by fraud and misrepresentation in this, that they are informed that said libellants before said bills of lading were signed and delivered, informed the capt. of said boat that a custom existed

on the Tombigby river, that when cotton was shipped on board of a steamboat to be transported to Mobile, that if the boat should be captured by an armed body of men and robbed while descending said river, and said cotton thereby lost to the owner, that neither the boat nor the owners were to be liable for said cotton, when in truth, as they are informed no such custom existed; that said libellants, as respondents are informed, represented to said capt. before said cotton was shipped as aforesaid, and before said bills of lading for said cotton were signed, that such a custom as aforesaid did exist on said river, and that it was not necessary to incorporate it in the said bills of lading, because if said boat was thus robbed, and the cotton lost to the said owners, without any fault or neglect of the officers or crew of said boat, that the said boat, and the owners thereof, were in no way liable for the loss; and that said capt. believing that said statement of facts to be true, received said cotton without inserting in the said bills of lading the exception of being robbed, as aforesaid, by armed robbers, without any fault or neglect of the officers or crew of
18 said boat, while said boat was descending said river as aforesaid.

Respondents therefore insist that said false representation was a fraud upon said capt. and owners of said boat and that said bills of lading were obtained by the fraud and false representation of the said libellants, which if they had not been made, as respondents are informed, said capt. would not have received said cotton on said boat, and would not have allowed said bills of lading to have been signed or delivered to said libellants for said cotton as aforesaid.

A. F. HURTEL.

Sworn to and subscribed by A. F. Hurtel, one of the respondents, before me, this 24th day of July, A. D. 1866.

P. LA VERGY, *Clerk.*

Exception.

And now the libellants come and except to the amended answer, and say that the allegations therein are insufficient to bar the libel and that each and both pleas or answers are insufficient to bar the libel.

DARGAN & TAYLOR,
For Libellants.

Decree.

BOON & CO., & OTHERS,
vs.
STEAMBOAT BELFAST.

SATURDAY, *July*, 28, 1866.

It is ordered by the court that the claims filed in this case be consolidated, which are hereinafter specified; but which must be considered several as to each complainant: and now on this day come the several libellants and respondents by their counsel, and this cause having been regularly continued until this day, was submitted to the court for a final decree, and the respective libels, answers, and evi-

dence being duly considered by the court, it is adjudged that the allegations contained in the said libels are true, that the several claims therein propounded are valid liens on said steamboat, her tackle, apparel and furniture, and that the claims of Boone & Co., as set forth in their libel, has been sustained by proof to the amount
19 of one thousand dollars, for which they are allowed a decree, with their costs

That the claim of J. H. & S. B. Steers, as set forth in their libel, has been sustained by proof to the amount of fourteen hundred dollars, for which they are allowed a decree, with their costs.

That the claim of John Watson & Co., as set forth in their libel, has been sustained by proof to the amount of sixteen hundred dollars, for which they are allowed a decree, with their costs.

And it is further ordered that the said steamboat Belfast with her tackle, apparel and furniture, be exposed at public sale, in front of the court-house door, by the sheriff of Mobile County: that he give ten days' previous notice of the time and place of making such sale; and that out of the proceeds of the sale of said steamboat, he satisfy the several decrees in this case, and the costs, and if there be any residue left in his hands, that he pay the same to the parties entitled by law to receive said surplus.

Certificate of appeal.

THE STATE OF ALABAMA, *Mobile County:*

I, P. LaVergy, clerk of the City Court of Mobile, sitting in admiralty, do hereby certify that Ben. F. Nelson, and A. F. Hurtel, owners, responding for the steamboat Belfast, have applied for and obtained an appeal from the above decree to the January term 1867, of the Supreme Court of the State of Alabama, and that they have given bond for the costs of appeal in the sum of one hundred dollars, with Charles Briggs and Frank David as sureties.

Witness my hand this 21st day of August, A. D. 1866.

P. LA VERGY, *Clerk.*

20 *Appeal Bond.*

THE STATE OF ALABAMA, *Mobile County*:

Know all men by these presents, that we, B. F. Nelson & A. F. Hurtel, as principals, and Charles Briggs and Frank David, as sureties, are held and firmly bound unto Boon & Co., their heirs, executors, or administrators, in the sum of one hundred dollars, for the payment of which we jointly and severally bind ourselves, our heirs, executors, or administrators, firmly by these presents. Sealed with our seals, and dated this 9th day of August, A. D. 1866.

The condition of the above obligation is such, that whereas, the above bounden B. F. Nelson and A. F. Hurtel, owners of the steamboat Belfast, have this day applied for and obtained an appeal, returnable to the January term, 1867, of the Supreme Court of Alabama, to supercede and reverse a decree recovered by the said Boon & Co.,

against the said steamboat Belfast at the July term, 1866, of the City Court of Mobile, setting in admiralty, for one thousand dollars, besides costs:

Now, if the said B. F. Nelson and A. F. Hurtel shall prosecute to effect their said suit in the Supreme Court of the State of Alabama, and shall pay and satisfy such judgment for costs as the Supreme Court shall render in the premises, then this obligation to be null and void, otherwise to remain in full force and effect.

Signed) BEN. F. NELSON. [L. S.]
A. F. HURTEL. [L. S.]
CHAS. BRIGGS. [L. S.]
T. DAVID. [L. S.]

Citation in Appeal.

THE STATE OF ALABAMA, *Mobile County, City Court:*

To the sheriff of Mobile County, greeting:

Whereas, at a term of the City Court of Mobile for Mobile County, sitting in admiralty held on the first Monday of July, 1866, and continued to the 28th day of July, 1866, in a certain cause in said court,
21 wherein Boon & Co. are libellants, and steamboat Belfast is defendant, a decree was rendered against said steamboat Belfast, to reverse which decree the said steamboat, by her owners and respondents, B. F. Nelson and A. F. Hurtel, has on this day applied for and obtained from this office an appeal returnable to the next term of our Supreme Court of the State of Alabama, to be held at Montgomery on the first Monday of January, and the necessary bond for costs having been given by the said B. F. Nelson and A. F. Hurtel, with Charles Briggs and Frank David, as sureties:

Now, you are hereby commanded, without delay, to cite the said Boon & Co., or Dargan & Taylor, their attorneys, to appear at the next term of our said Supreme Court to defend against the said appeal, if they think proper.

Witness P. La Vergy, Clerk of the City Court of said county, this 13th day of August, A. D. 1866.

Attest:

P. LA VERGY, *Clerk.*

Sheriff's return.

Rec'd August 13, 1866, and on the 14th day of August, 1866, I served a copy of the within citation in appeal on E. S. Dargan, one of the firm of Dargan & Taylor.

M. D. GRINNELL, *Sheriff.*
By B. WILLIAMS, *D. S.*

22 *Libel of J. H. & S. B. Steers.*

To the Honorable HENRY CHAMBERLAIN,
Judge of the City Court of Mobile:

The libel and complaint of James H. Steers and Schuyler B. Steers, partners in trade under the name and style of J. H. & S. B. Steers, against the steamboat Belfast, her tackle, apparel and furniture, now lying at the port of Mobile, whereof Henry Taylor is captain or master, would respectfully show unto your honor:

First. That on the 21st day of January, A. D. 1866, your libellants, by and through C. W. Brown, acting as their agent, shipped at Columbus, Miss., on board said steamboat Belfast, being a common carrier, ninety bales of cotton, to be delivered to Messrs. Tarleton, Ledyard & Co., at Mobile, dangers of the river excepted, said consignees paying freight therefor, at the rate of six dollars per bale, for which the clerk of said boat S. Goodall gave a bill of lading, to the effect above stated.

Second. That out of the ninety bales so shipped as aforesaid, there were delivered at Mobile only fifty-six bales, and the other thirty-four bales never were delivered, but were lost somewhere on the Bigby river, not by any danger of the river, after the boat had come within the State of Alabama, whereby said cotton was lost to libellants.

They therefore pray process in admiralty against said steamboat Belfast, her tackle, apparel and furniture, and pray that said boat, her tackle, apparel, and furniture, and all persons intervening for their interest therein be condemned to pay to the libellants, the value of said thirty-four bales of cotton, which is six thousand dollars, but which your libellants pray may be ascertained by the court, and also in all cost.

SCHUYLER B. STEERS,
One of the firm of J. H. & S. B. Steers.
DARGAN & TAYLOR,
Proctors.

Security for costs.

We acknowledge ourselves security for the cost of this libel.
TARLETON, LEDYARD & CO.

March 29, 1866.

23 *Affidavit.*

THE STATE OF ALABAMA, *Mobile County:*

Personally appeared before me, P. La Vergy, Clerk of the City Court of Mobile, Schuyler B. Steers, who, being duly sworn, saith on oath that the several allegations in the above libel and complaint by him subscribed are true in substance and in fact.

Witness my hand, this 29th day of March, A. D. 1866.
P. LA VERGY, *Clerk.*

Writ of seizure.

THE STATE OF ALABAMA:

To any sheriff of the State of Alabama, greeting:

Whereas, James H. Steers and Schuyler B. Steers, partners in trade, under the name and style of J. H. & S. B. Steers, have this day filed a libel and complaint in the City Court of Mobile, for Mobile County, against the steamboat called the Belfast, her tackle, apparel, and furniture, of which Henry Taylor is, or was lately, master, alleging that the said steamboat is indebted to said J. H. & S. B. Steers in the sum of six thousand dollars, due on the day of January, 1866, for thirty-four bales of cotton, shipped on board said steamboat, as set forth in the libel and complaint filed in this case, which said complaint has been sworn to: Now, therefore, you are hereby commanded to seize and take into your possession the said steamboat Belfast, her tackle, apparel, and furniture, and hold her until released by due course of law.

Witness P. La Vergy, Clerk of said court, this 29th day of March, in the year of our Lord, one thousand eight hundred and sixty-six.

Issued 29th day of March, 1866.

Attest:

P. LA VERGY, *Clerk.*

Sheriff's return.

Received March 29th, 1866, and on the same day I seized and took into my possession the steamboat Belfast, her tackle, apparel and furniture, and on the 31 day of March, 1866, I posted copies of the monitions, which is hereto attached, on the said steamboat, and on the court-house door, and I now have said boat in my possession.

M. D. GRINNELL,
Sh'ff of Mobile Co.
By JEROME ESLAVA, *D. S.*

24 *Monition.*

THE STATE OF ALABAMA, *Mobile County:*

J. H. & S. B. STEERS
vs.
S'TB'T BELFAST. } Libel in admiralty.

Public notice is hereby given, that by virtue of a writ of seizure issued in the above-stated case from the City Court of Mobile, at the instance of the said J. H. & S. B. Steers, libellants, which said writ is returnable according to law, I did, on the 29th day of March, 1866, seize and take into my possession the said steamboat Belfast, her tackle, apparel, and furniture, which I now hold subject to the decree which may be rendered in said cause by the court.

Parties in interest are hereby notified accordingly.

March 31st, 1866.

Attest:

M. D. GRINNELL,
Sheriff Mobile County.

Answer.

The City Court of Mobile, in admiralty, first Monday in May, 1866.

To the Honorable HENRY CHAMBERRAIN,
Judge of the City Court of Mobile:

And now, Ben. C. Nelson and A. F. Hurtel, intervening for their interest in the steamer "Belfast," appear before this hon. court, and for answer to the libel and complaint of Schuyler B. Steers & J. B. Steers, partners in trade, under the name and style of J. H. & S. B. Steers, against said steamboat, and against all persons lawfully intervening for their interest therein, allege and articulately propound as follows:

First. That respondents are the owners of the said steamboat Belfast, and were the owners of said boat on the 21st January, 1866, and up to and until the present time. That Mr. Henry Taylor was the captain of said boat on the 21st Jan'y, 1866, and continued to be until said boat was libelled and tied up on the day of ,1866.

Second. That respondents are informed that one C. W. Browne, at Columbus, in the State of Mississippi, on the 21st day of January, 1866, shipped ninety bales of cotton on board said boat, marked S. & S., to Tarleton, Ledyard & Co., at Mobile, at and for the price of six dollars per bale freight. That a bill of lading was given therefor by S. Goodall, as clerk of said boat.

Third. Respondents are informed that said boat left Columbus for Mobile on the morning of the 22nd of January, 1866, that said boat descended said river until she reached a point about five miles below Coffeville, at Malone's gin, at which time she had on board a number of passengers, and five hundred and ninety-five bales of cotton, consigned to different firms in Mobile. That near said gin-house, between 9 and 10 o'clock p. m., on the 25th day of January, 1866, a party of men on the east bank of the river hailed said boat with a light, as is usual on said river. That capt., who was at the wheel at the time, had the engines stopped and asked what was wanted; they replied that they had freight to go on board; the capt. informed them that he could not take any more freight; they then informed the capt. that there were passengers to go on board; the capt. informed them that he could not accommodate any more passengers; by this time, said boat was within twenty or thirty yards from the bank when about twenty armed men cocked their guns and levelled them at the boat, and said to the capt. that if they did not land the boat they would fire into her. Being satisfied that the threat would be carried into execution, and fearing a destruction of life and property, and hoping to save the boat and cargo, the capt. landed the boat, as ordered, when a man by the name of Britton came aboard and asked the capt. if there were any Yankees aboard; the capt. informed him that there were no Yankees aboard that he knew of; Britton then demanded the surrender of the boat; the capt. informed him that she would not be surrendered, when Britton cried out "Boys come aboard," when about twenty armed men came aboard,

all disguised by having their faces blacked. Britton again demanded the surrender of said boat. The capt. refused to surrender her, and was then surrounded by said armed men and arrested. The capt. was ordered by Britton to go to the wheel; the capt. replied that he would die first; then they marched the capt. to his office. put
26 him in the office, and took forcible possession of said cotton, and boat, &c.

Fourth. Respondents are informed that an armed body of men went to E. H. Gordy, the pilot, and compelled him by force of arms to go to the wheel, and the engineers were likewise compelled to get up steam on said boat, by said armed men, and said boat was started down the river. That said armed men put off cotton at different places on the river, as the boat went down; that said boat was taken into what is called the "cut-off," by said armed men, as aforesaid, on Sunday morning, the 28th day of January, 1866; she was there tied up until near night, and then started up the river, and about 8 o'clock p. m., at the lower end of McIntosh's Bluff, the boat was landed and the capt. driven ashore by said armed men. That said boat was then moved up the river a distance of about eight miles, where both the clerks were driven ashore. The said boat was then moved up the river to a place called Beckham's Landing, where another lot of cotton was put off. The said boat was then turned over and delivered to the mate and pilot; the said boat then rounded to to go down the river, but as she rounded to she was fired into by a party on shore; several of the shots or balls passed through the pilot-house. The said boat was landed, and inquiry was made as to why she was fired into; to which the party on shore replied that they thought the persons on said boat wanted to steal the cotton on the bank. Said boat was then started down the river, took on the clerks, and then the capt., when she was put in charge of the capt., who moved the boat a short distance below to the mouth of a bayou, just above the junction of the rivers, where he found the steamer Marengo taking on a portion of the cotton that had been put off the Belfast. That in a short time a gunboat of the United States came up, under charge of an officer of the United States; that said officer took charge of said steamer Belfast
27 and ordered the capt. to go up the river to Payne's landing and to take on board all the cotton that could be found that had been taken from the Belfast. That was done, and the said boat then proceeded to Mobile under charge of said United States officer. That the said boat reached Mobile on the morning of the 31st of January, 1866. That Capt. Taylor, and the officers of said boat, afterwards entered a protest in due form, a copy of which is hereto attached, Exhibit (A,) and made a part of this answer—the original will be produced if required. That the whole matter was investigated by the military authorities, in pursuance of an order from Major General Wood, commanding the district of Alabama. That the officers of said boat were discharged, and those who committed the robbery kept or held for trial. That some of them have been convicted for robbing said boat, and sentenced, and others

held under bond for trial; all the evidence and proceedings, proofs, &c., will be exhibited to this hon. court if required.

Fifth. Respondents are informed that said steamboat was delivered up to Charles Briggs & Co., as the agent of the owners, on the evening of the 31st of January, 1866. That all the cotton shipped on said steamer at Columbus, and intermediate landings, as aforesaid, was then, and at different times since, delivered to the different consignees thereof, except from thirty-eight to forty-three bales. That there are two other cases pending in this hon. court against said boat for cotton said to have been lost on said downward trip; one for the value of twenty-nine bales, and one for the value of thirty-five bales.

Sixth. Respondents are informed that on the 9th day of February, fifty-nine bales of said cotton, which had been recaptured after it had been taken from said steamer Belfast, was turned over and delivered to Chas. Briggs & Co., as agents of the boat; that owing to the fact that the marks on the cotton having been defaced, and, in some instances, the bagging partly cut off, that it was agreed that it would be received and distributed among the consignees pro
28 rata; that a copy of said receipt is hereto attached, and marked exhibit (B,) and made a part of this answer. The original will be produced on the trial if required.

Seventh. Respondents are informed that the tide ebb and flows some distance above the point where said boat was captured as aforesaid. That the officers and crew had no arms, but acted in good faith and did all in their power to save said boat and cargo; that said boat and cargo was captured by a number of lawless roving robbers at a point on the Bigby river where the tide ebbs and flows, and within the admiralty jurisdiction of the United States. That by an act of Congress of the United States, said act of robbery is declared to be piracy, and that the boat nor owners are liable for the act aforesaid, if they acted in good faith and did all that could be done to save said boat and cargo.

Eighth. Respondents are informed that it is the universal practice and understanding among steamboat men navigating the waters of the Bigby river, that when cotton is received by a boat to be transported to Mobile, if she should be captured by an armed force, without any fault or neglect of the officers and crew, that in such case the boat nor owners are liable for such loss.

Ninth. That this honorable court has not jurisdiction and ought not to proceed to enforce the claim alleged in the libel aforesaid against the said steamboat Belfast, or against them, the respondents, intervening for their interests therein.

Tenth. That all and singular the premises are true, as respondents are informed and believe, in verification whereof, if denied, respondents crave leave to refer to the depositions and other proofs to be by them exhibited in this cause.

Wherefore, respondents pray that this hon. court would be pleased to pronounce against the libel aforesaid, and to condemn the libellants

in costs, and otherwise right and justice administer in the
29 premises.

A. F. HURTEL.
BOYLES & OVERALL,
Proctors for Respondents.

Sworn to, by A. F. Hurtel, one of the respondents, before me, this 1st day of May, A. D. 1866.

P. LA VERGY, *Cl'k.*

Exhibits.

Exhibits A and B, being identical with the same in the suit of Boon & Co., they will be found on pages 7, 8, and 9 of this transcript. (Note by clerk Sup. Co.)—they will be found on pages 8, 9, 10, and 11 of this transcript.

Protest to the jurisdiction of the Court.

(Protest to the jurisdiction.)

To the Honorable HENRY CHAMBERLAN,
Judge of the City Court of Mobile, in admiralty:

And now, A. F. Hurtel and Ben. C. Nelson, in person intervening for their interest in the steamer Belfast, appear before this honorable court, and show to your honor that they are sole owners of said boat; and further show to your honor that the cases now pending in this honorable court, wherein J. H. & J. B. Steers are libellants against the steamer Belfast, and John Watson & Co. *vs.* Steamer Belfast, ought not to be entertained, because the contract of affreightment upon which said libels are founded, were entered into in the State of Mississippi, to wit: at Columbus, in the State of Mississippi, and without the jurisdiction of this hon. court. That said contract of affreightment being made in the State of Mississippi, and without the jurisdiction of this hon. court, and that this court should not take jurisdiction of said cases.

(Signed) A. F. HURTEL.

Sworn to and subscribed by A. F. Hurtel, one of the owners of said boat, before me, this 1st day of May, 1866.

P. LA VERGY, *Cl'k.*

30 All the subsequent pleadings and the decree of the court in this suit are one and the same with that of Boon & Co. *vs.* The steamboat Belfast, which see, commencing at page 16 of this transcript. (Note by clerk Sup. Co.—at page 11 of this transcript.)

Certificate of appeal.

THE STATE OF ALABAMA, *Mobile County:*

I, P. La Vergy, Clerk of the City Court of Mobile, sitting in admiralty, do hereby certify that B. F. Nelson and A. F. Hurtel, owners,

responding for the steamboat Belfast, have applied for and obtained an appeal from the decree of the court to the January term, 1867, of the Supreme Court of the State of Alabama, and that they have given the requisite bond for the costs of appeal, in the sum of one hundred dollars, with Charles Briggs and Frank David as sureties.

Given under my hand at office, this 21st day of August, 1866.

P. LA VERGY, *Clerk.*

Appeal bond.

THE STATE OF ALABAMA, *Mobile County:*

Know all men by these presents, that we, B. F. Nelson and A. F. Hurtel, as principals, and Charles Briggs and Frank David, as sureties, are held and firmly bound unto J. H. & S. B. Steers, their heirs, executors, or administrators, in the sum of one hundred dollars, for the payment of which we jointly and severally bind ourselves, our heirs, executors, or administrators, firmly by these presents. Sealed with our seals, and dated this 9th day of August, A. D. 1866.

The condition of the above obligation is such, that whereas,
31 the above-bounden B. F. Nelson and A. F. Hurtel, owners of the steamboat Belfast, have this day applied for and obtained an appeal, returnable to the January term, 1867, of the Supreme Court of Alabama, to supersede and reverse a judgment recovered by the said J. H. & S. B. Steers, against the said steamboat Belfast, at the July term, 1866, of the City Court of Mobile, sitting in admiralty, for fourteen hundred dollars, besides costs:

Now, if the said B. F. Nelson and A. F. Hurtel shall prosecute to effect their said suit in the Supreme Court of the State of Alabama, and shall pay and satisfy such judgment for costs as the Supreme Court shall render in the premises, then this obligation to be null and void, otherwise to remain in full force and effect.

(Signed) BEN. F. NELSON. [L. S.]
A. F. HURTEL. [L. S.]
CHAS. BRIGGS. [L. S.]
F. DAVID. [L. S.]

Citation in appeal.

THE STATE OF ALABAMA, *Mobile County, City Court:*

To the sheriff of Mobile County, greeting:

Whereas, at a term of the City Court of Mobile, sitting in admiralty, held on the first Monday of July, 1866, and continued until the 28th day of July, 1866, in a certain cause in said court, wherein J. H. & S. B. Steers are libellants, and steamboat Belfast is defendant, a decree was rendered against said steamboat Belfast, to reverse which decree the said steamboat Belfast, by her owners and respondents, B. F. Nelson and A. F. Hurtel, has this day applied for
32 and obtained from this office an appeal, returnable to the next term of our Supreme Court of the State of Alabama, to be held

at Montgomery, on the first Monday of January next, and the necessary bond for costs having been given by the said B. F. Nelson and A. F. Hurtel, with Charles Briggs and Frank David as sureties:

Now, you are hereby commanded, without delay, to cite the said J. H. & S. B. Steers, or Dargan & Taylor, their attorneys, to appear at the next term of our said Supreme Court, to defend against the said appeal if they think proper.

Witness, P. La Vergy, clerk of the City Court of said county, this 13th day of August, A. D. 1866.

Attest: P. LA VERGY, *Clerk.*

Sheriff's return.

Received August 13th, 1866, and on the 14th day of August, 1866, I served a copy of the within citation in appeal, on E. S. Dargan, one of the firm of Dargan and Taylor.

M. D. GRINNELL, *Sh'ff.*
By B. WILLIAMS, *D. S.*

Libel of J. Watson & Co.

33 To the Honorable HENRY CHAMBERLAIN,
Judge of the City Court of Mobile:

The libel and complaint of John Watson and E. H. Taylor, partners in trade, under the name and style of John Watson & Co., against the steamboat Belfast, now lying at the port of Mobile, of which Henry Taylor is master, her tackle, apparel, and furniture, and against all persons intervening for their interest therein, would respectfully show:

1st. That on or about the 21st day of January, 1866, your libellants shipped on board the steamboat Belfast, being a common carrier, then lying at Columbus, Miss., one hundred bales of cotton, property of libellants. The shipment was made at Columbus, through B. S. Long & Sons, as the agent of your libellants; and said steamboat was then trading on the Bigby and Mobile rivers, in the State of Alabama, as a common carrier, and as such received said one hundred bales of cotton, to be carried to Mobile, and there delivered to John E. Curran & Co., the consignees, they paying freight therefor, the dangers of the river excepted.

2nd. Your libellants further allege, that on the way down to Mobile, somewhere in the State of Alabama, thirty bales of said cotton was lost, not by any dangers of the river, and was never delivered in Mobile, whereby your libellants suffered loss to the extent of six thousand dollars.

Therefore, your libellants pray admiralty process against said steamboat Belfast, her tackle, apparel and furniture, and all persons intervening for their interest therein, be condemned, to pay the damages aforesaid, together with the costs of this suit.

E. H. TAYLOR,
Of JNO. WATSON & CO.
DARGAN & TAYLOR,
Proctors.

34 *Security for costs.*

I hereby acknowledge myself security for costs in this suit. Witness my hand, this 30th day of March, 1866.

JOHN E. CURRAN.

Affidavit.

THE STATE OF ALABAMA, *Mobile County:*

Personally appeared before me, P. La Vergy, Clerk of the City Court of Mobile, E. H. Taylor, jr., who, being duly sworn, says, that the several allegations in the libel and complaint by him subscribed, are true in substance and in fact.

Witness my hand, this 30 day of March, 1866.

P. LA VERGY, *Clerk.*

Writ of seizure.

The State of Alabama to any sheriff of the State of Alabama, greeting:

Whereas, John Watson & E. & C. Taylor, jr., partners in trade, under the name and style of John Watson & Co., have this day filed a libel and complaint in the City Court of Mobile, for Mobile County, against the steamboat called the Belfast, her tackle, apparel and furniture, of which Henry Taylor is, or was lately, master, alleging that the said steamboat is indebted to said John Watson & Co. in the sum of six thousand dollars, due on the day January, 1866, for thirty-four bales of cotton shipped on board said steamboat, and not delivered, as set forth in the libel and complaint filed in this case, which said complaint has been sworn to. Now, therefore, you are hereby commanded to seize and take into your possession the said steamboat Belfast, her tackle, apparel, and furniture, and hold her until released by due course of law.

35 Witness, P. La Vergy, clerk of said court, this 30th day of March, in the year of our Lord one thousand eight hundred and sixty-six.

Issued 30th day of March, 1656.

Attest:

P. LA VERGY, *Clerk.*

Sheriff's return.

Received March 30, 1866, and on the same day I seized and took into my possession the steamboat Belfast, her tackle, apparel, and furniture; and on the 2nd day of April, 1866, I posted copies of the monition, which is hereto attached, on the said steamboat and at the court-house door; and I now have said boat in my possession.

M. D. GRINNELL,
Sheriff Mobile Co.
By JEROME ESLAVA, *D. S.*

Monition.

JOHN WATSON & Co.
vs.
ST'B'T BELFAST. } Libel in admiralty.

THE STATE OF ALABAMA, *Mobile County:*

Public notice is hereby given, that by virtue of a writ of seizure, issued in the above-stated cause from the City Court of Mobile, at the instance of the said John Watson & Co., libellants, which said writ is returnable according to law, I did, on the 30th day of March, 1866, seize and take into my possession the said st'b't Belfast, her tackle, apparel, and furniture, which I now hold, subject to the decree which may be rendered in said cause by said court.

Parties in interest are hereby notified accordingly.

March 31st, 1866.

Attest:

M. D. GRINNELL,
Sheriff of Mobile County.

Answer.

36 City Court of Mobile, in admiralty, first Monday in May, 1866.

To the Honorable HENRY CHAMBERLAIN,
Judge of the City Court of Mobile:

And now, Ben. C. Nelson and A. F. Hurtel, intervening for their interest in the steamer Belfast, appear before this hon. court, and for answer to the libel and complaint of John H. Watson and E. H. Taylor, partners in trade, under the name and style of John Watson & Co., against said boat, and against all persons intervening for their interest therein, allege and articulately propound as follows:

First. That the respondents are the owners of said steamboat Belfast, and were the owners of said boat on the 20th day of January, 1866, and after and until the present time; and that McHenry Taylor was the capt. of said boat on the 21st of January, 1866, and continued to be until said boat was libelled and tied up, to wit: on the day of , 1866.

Second. Respondents are informed, that B. S. Long & Sons, on or about the 20th of January, 1866, shipped ninety-nine bales of cotton (and one in dispute) on board said boat, at Columbus, in the State of Mississippi, marked J. W. & Co., to J. E. Curran & Co., at Mobile, at and for the price of six dollars per bale freight; that a bill of lading was given therefor by S. Goodall, as clerk of said boat.

Third. Respondents are informed that on or about the morning of the 22d of January, 1866, that said boat descended the river until she reached a point about five miles below Coffeeville, at Malone's gin, at which time she had on board a number of passengers, and five hundred and ninety-five bales of cotton, consigned to different firms in Mobile; that near said gin-house, between 9 and 10 o'clock p. m., on

37 the 25th day of January, 1866, a party of men on the east bank of the river hailed said boat with a light, as is usual on said river. The capt. who was at the time at the wheel, had the engines stopped, and asked what was wanted; they replied they had freight to go on board; the capt. informed them that he could not take any more freight; they then informed the capt. that there were passengers to go on board; the capt. informed them that they could not accommodate any more passengers. By this time said boat was within from twenty to thirty yards of the shore, when about twenty armed men cocked their guns and levelled them at the boat and said to the capt. that if he did not land the boat that they would fire into her. Being satisfied that the threat would be carried into execution, and fearing a destruction of life and property, and hoping to save the boat and cargo, the capt. landed the boat, when a man by the name of Britton came aboard and asked the capt. if there were any Yankees on board; the capt. informed them that there was none aboard that he knew of. Britton then demanded the surrender of the boat; the capt. informed him that she would not be surrendered, when Britton cried out, "Boys come aboad," when about twenty armed men came aboard, all disguised by having their faces blacked; Britton again demanded the surrender of said boat, the capt. still refused to surrender her, and he was then surrounded by said armed men and arrested. The capt. was ordered to go to the wheel by Britton; he refused to go, and said he would die first; then they marched the capt. to his office, drove him into it, and locked the door, and put an armed guard at the front and back doors of said office, and took forcible possession of said cotton and boat, &c.

38 Fourth. Respondents are informed that an armed body of men went to E. H. Gordy, the pilot, and compelled him by force of arms to go to the wheel, and the engineer's were likewise compelled to get up steam on said boat, by said armed men, and said boat was started down the river. That said armed men put off cotton at different places on the river as the boat went down. That said boat was taken into the cut-off by said armed men as aforesaid, on Sunday morning, the 28th day of January, 1866; she was there tied up until near night, and then started up the river, and about 8 o'clock p. m., at the lower end of McIntosh's Bluff, the boat was landed and the capt. driven ashore by said armed men. That said boat was then moved up the river a distance of about eight miles, where both the clerks were driven ashore; said boat was then moved up the river to a place known as Beckham's Landing, where another lot of cotton was put off. The said boat was then turned over to the mate and pilot by said armed men; the said boat was then rounded to to go down the river, but as she was rounding to she was fired into from a party on shore, several of the shot or balls passed through the pilot-house. The said boat was immediately landed, and inquiry made as to why she was fired into; to which the parties on shore replied that they, the persons on said boat wanted to steal the cotton on the bank; said boat was then started down the river; took on the clerks, and then the capt. when she was put in charge of the capt. who moved

the boat a short distance down the river to the mouth of a bayou, just above the junction of the rivers, where he found the steamer Marengo taking on a portion of the cotton that had been taken off the Belfast; that in a short time a gunboat of the United States came up, under charge of an officer of the United States; that said officer took charge of said steamer Belfast, and ordered the capt. to go up the river to Payne's landing, and to take on board all the cotton that could be found that had been taken from the Belfast. This was done, and the said boat then proceeded to Mobile under charge of said United States officer; that the said boat reached Mobile on the
39 morning of the 31st January, 1866. That Capt. Taylor, and officers of said boat afterwards entered a protest in due form, a copy of which is hereto attached, and made a part of this answer, and marked Exhibit A, (see page 7 of this transcript. Note by clerk Sup. Court. It will be found on page of this transcript,) the original will be produced if required. That the whole matter was investigated fully by the military authorities in pursuance of an order made by Major General C. R. Wood, commanding the district of Alabama. That the officers of said boat, was discharged, and those who committed the robbery kept or held for trial; that some of them have been convicted for robbing said boat and sentenced, and others held under bond for trial; all the evidence and proceedings, proofs, &c. will be exhibited to this hon. court if required.

Fifth. Respondents are informed that said steamboat was delivered up to Charles Briggs & Co., as the agents of the owners, on the evening of the 31st of January, 1866: that all the cotton shipped on said boat at Columbus and intermediate landings, as aforesaid, was then and at different times since delivered to the different consignees thereof, except from thirty-eight to forty-three bales; that there are two other cases pending in this hon. court against said boat for cotton said to have been lost on said downward trip; one for the value of twenty-nine bales of cotton, and one for the value of thirty-four bales of cotton.

Sixth. Respondents are informed that on the ninth day of February, fifty-nine bales of said cotton which had been recaptured, after it had been taken from said steamer Belfast, has been turned over and delivered by Charles Briggs & Co. as agents of the boat; that owing to the fact that the marks on the cotton having been defaced, and in some instances the bagging partly cut off, that it was agreed, that it would be received and distributed among the consignees pro rata; that a copy of said receipt is hereto attached and marked
40 Exhibit B, (see page 9 of this transcript. Note by clerk Supreme Court, it will be found on page of this transcript,) and is made a part of this answer, the original will be produced on the trial if required.

Seventh. Respondents are informed that the tide ebbs and flows some distance above the point where said cotton was captured as aforesaid; that the officers and crew had no arms, but acted in good faith and did all in their power to save said boat and cargo; that said boat and cargo was captured by a number of lawless roving rob-

bers, at a point on the Bigbee where the tide ebbs and flows, and within the admiralty jurisdiction of [of] the United States; that by an act of the Congress of the United States, said act of robbery is declared to be piracy, and that the boat nor owners are liable for the act aforesaid, if the officers of the boat acted in good faith and did all in their power to save said boat and cargo.

Eighth. Respondents are informed that it is the universal practice and understanding amongst steamboat men navigating the waters of the Bigbee river, that when cotton is received by a boat to be transported to Mobile, if she should be captured by an armed force without any fault or neglect of the officers and crew, that in such case, the boat nor owners are liable for such loss.

Ninth. That this honorable court has not jurisdiction, and ought not to proceed to enforce the claim alleged in the libel aforesaid, against the said steamboat Belfast, or against them, the respondents, intervening for their interest therein.

Tenth. That all and singular the premises are true, as respondents are informed and believe in verification whereof, if denied, respondents crave leave to refer to the depositions and other proofs to be by them exhibited in this cause.

Wherefore, respondents pray that [that] this hon. court would be pleased to pronounce against the libel aforesaid, and to
41 condemn the libellants in costs, and otherwise right and justice administer in the premises.

A. F. HURTEL.
BOYLES & OVERALLS,
Proctors for Respondents.

Sworn to by A. F. Hurtel, one of the respondents before me, this 1st day of May, A. D. 1866.

The protest to the jurisdiction of the court in this suit is one and the same with that of J. H. and S. B. Steers, is found on page 25 of this transcript; (Note by Sup. Court, found on page 29 of this transcript,) and all the subsequent pleadings and decree of the court are identical with the same in the case of Boon & Co., which see, commencing at page 10 of this transcript: (Note by clerk Sup. Court—commencing at page 11 of this transcript.)

Certificate of Appeal.

THE STATE OF ALABAMA, *Mobile County, ss:*

I, P. La Vergy, Clerk of the City Court of Mobile, setting in admirality, do hereby certify that B. F. Nelson and A. F. Hartell, owners, responding for the steamboat Belfast, have applied for and obtained an appeal from the decree of this court, to the January term 1867, of the Supreme Court of Alabama, and that they have given the requisite bond for the costs of appeal in the sum of one hundred dollars with Charles Briggs and Frank David as sureties.

Witness my hand, this 21st day of August, 1866.

P. LA VERGY, *Clerk.*

Appeal Bond.

THE STATE OF ALABAMA, *Mobile County, ss:*

Know all men by these presents, that we, B. F. Nelson and A. F. Hurtel, as principals, and Charles Briggs and Frank David, as sureties, are held and firmly bound unto John Watson & Co., their
42 heirs, executors or administrators, in the sum of one hundred dollars, for the payment of which we jointly and severally bind ourselves, our heirs, executors or administrators, firmly by these presents. Sealed with our seals, and dated this 9th day of August, A. D. 1866.

The condition of the above obligation is such, that whereas, the above-bounden B. F. Nelson and A. F. Hurtel, owners of the steamboat Belfast, have this day applied for and obtained an appeal returnable to the January term, 1867, of the Supreme Court of Alabama, to supersede and reverse a judgment recovered by the said John Watson & Co., against the said steamboat Belfast, at the July term 1866, of the City Court of Mobile, setting in admiralty, for sixteen hundred dollars besides costs:

Now, if the said B. F. Nelson and A. F. Hurtel, shall prosecute to effect their said suit in the Supreme Court of the State of Alabama, and shall pay and satisfy such judgment for costs as the Supreme Court shall render in the premises, then this obligation to be void, otherwise to be and remain in full force and effect.

(Signed) BEN. F. NELSON. [L. S.]
A. F. HURTEL. [L. S.]
CHAS. BRIGGS. [L. S.]
F. DAVID. [L. S.]

Citation in Appeal.

THE STATE OF ALABAMA, *Mobile County, City Court:*

To the sheriff of Mobile county, greeting:

Whereas, at the term of the City Court of Mobile, setting admiralty, held on the first Monday of July, 1866, and continued until the 28th day of July, 1866, in a certain cause in said court, wherein, John Watson & Co. are libellants, and steamboat Belfast is defend-
ants, a decree was rendered against said steamboat Belfast, to
43 reverse which decree the said steamboat Belfast, by her owners and respondents, B. F. Nelson and A. F. Hurtel, has on this day applied for and obtained from this office an appeal, returnable to the next term of our Supreme Court of the State of Alabama, to be held at Montgomery on the first Monday of January next, and the necessary bond for costs having been given by the said B. F. Nelson and A. F. Hurtel with Charles Briggs and Frank David, as sureties:

Now, you are hereby commanded, without delay, to cite the said

John Watson & Co., or Dargan and Taylor, their attorneys, to appear at the next term of our Supreme Court, to defend against the said appeal if they think proper.

Witness, P. La Vergy, Clerk of the City Court of said county, this 13th day of August, A. D. 1866.

P. LA VERGY, *Clerk.*

Sheriff's Return.

Received August 13th, 1866, and on the 14th of August, 1866, I served a copy of the within citation on E. S. Dargan, one of the firm of Dargan & Taylor.

M. D. GRINNELL, *Sheriff.*
By B. WILLIAMS, *D. S.*

44 *Bill of Exceptions.*

In the City Court of Mobile.

BOON & Co.
vs.
STEAMBOAT BELFAST.

J. H. & S. B. STEERS
vs.
SAME.

J. WATSON & Co.
vs.
SAME.

Be it remembered, that on the trial of the above-stated cases, the libellants, Boon & Co., to sustain their case, introduced and read in evidence the libel in the case of Boon & Co., a copy of which is hereto attached, marked A, and made a part of this bill of exceptions; and also two bills of lading, and proved that they were signed by the the clerk of said court, in Pickens County, Alabama, where said cotton was shipped; a copy of said bills of lading are hereto attached, marked exhibit B, and made a part of this bill of exceptions. It was admitted by respondents that the cotton mentioned in said bills of lading was received by said boat at Pickens County, in the State of Alabama.

The libellants then introduced in evidence the libel of J. H. & S. H. Steers, a copy of which is hereto attached and marked exhibit C, and made a part of this bill of exceptions; libellants then introduced the bill of lading, and proved that it was executed by the clerk of said boat, a copy of which is hereto attached and marked exhibit D, and made a part of this bill of exceptions; libellants admitted that the cotton mentioned in said bill of lading was received by said boat at the city of Columbus, in the State of Mississippi.

Libellants then introduced in evidence the libel of J. Watson & Co., and a bill of lading and proved that the cotton mentioned in
45 said bill of lading was received by said boat at the city of

Columbus, in the State of Mississippi, and proved that the clerk of said boat signed said bill of lading, a copy of which libel and bill of lading is hereto attached, marked exhibits F and F, and are made a part of this bill of exceptions.

Respondents intervened for their interest in said boat, and filed a protest to the jurisdiction of the court, which was overruled by the court, and respondents excepted; a copy of said protest is hereto attached, marked Exhibit G, and is made a part of the bill of exceptions.

Respondents then introduced, in evidence, the answer to the libel of Boon & Co., a copy of which is hereto attached, marked Exhibit H, and made a part of this bill of exceptions.

Respondents then introduced, in evidence, the answer to the libel of J. H. and S. B. Steers, a copy of which is hereto attached, marked Exhibit I, and is made a part of this bill of exceptions.

Respondents then introduced, in evidence, the answer to the libel of J. Watson & Co., a copy of which is hereto attached, marked Exhibit J, and is made a part of this bill of exceptions.

It was agreed that all three of said cases should be tried upon the same issue, and the case of Boon & Co., was selected as the case.

The libellants excepted, by their counsel, to so much of the answer to said libel, as are in these words: "Respondents are informed that tide ebbs and flows some distance above the point where said boat was captured as aforesaid; that the officers and crew had no arms, but acted in good faith, and done all in their power to save said boat and cargo; that said boat and cargo was captured by a number of lawless robbers, at a point on the Bigbee river where the tide
46 ebbs and flows, and within the admiralty jurisdiction of the United States; that by an act of the Congress of the United States said act of robbery is declared to be piracy, and that the boat nor owner are liable for the act aforesaid, if the officers and crew acted in good faith, and done all in their power to save said boat and cargo."

The libellants, by their counsel, excepted to the foregoing allegations as being insufficient in law to bar a recovery; that a capture upon tide water, within the body of a State was no bar to the action. The court sustained the exception, and respondents, by their counsel, excepted to the ruling of the court.

Respondents, by leave of the court, filed an amendment to the answer, in which they allege, that said boat was regularly licensed and enrolled at the custom-house, in the city of Mobile, in the State of Alabama, under and in pursuance of the laws of the United States of America, on the 11th day of October, 1865; that said boat procured a clearance from the custom-house, to wit, in the city of Mobile, in the State of Alabama, for the city of Columbus, in the State of Mississippi; that she was regularly engaged in navigation and commerce between the city of Mobile, in the State of Alabama, and the city of Columbus, in the State of Mississippi, and that on her downward trip from Columbus, in the State of Mississippi, to wit, on or about the 25th of January, 1866, while near Malone's gin, in

the State of Alabama, the cotton, the subject-matter of this suit, was lost while said boat was engaged in navigation and commerce between the city of Mobile, in the State of Alabama, and the city of Columbus, in the State of Mississippi; that said boat returned to Mobile; and again, to wit, on the 3d day of February, 1866, procured a clearance at the custom-house in the city of Mobile, and
47 State of Alabama, for the city of Columbus, in the State of Mississippi, but before she left Mobile, was libelled in said case and others, and insisted that the City Court of Mobile had no jurisdiction in said cause.

The libellants, by their counsel, excepted to the foregoing allegation, upon the ground that it was not sufficient to bar the action, and the court sustained the exception; and the respondents, by their counsel, excepted. A copy of the said amendment to said answer is hereto attached, and marked Exhibit M, and is made a part of this bill of exceptions.

The respondents then amended their said answer by leave of the court, and the libellants excepted to each allegation, and his exceptions were sustained by the court, and the respondents, by their counsel, excepted; a copy of which is hereto attached, and marked Exhibit W, and made a part of exceptions.

The libellants introduced evidence tending to show that all the cotton received was not delivered, and the value of that not delivered was four thousand dollars; also tending to show that said sum of four thousand dollars covered the loss of all three of the libellants; that this bill of exceptions is in all things to apply to each of the three libels. The respondents, now claim, in open court, an appeal in said cases, and it is granted upon the respondents giving sufficient bond for costs. And it is admitted by libellants, that said boat was robbed upon tide waters, in the State of Alabama, about one hundred miles above the city of Mobile, without any fault or neglect of the officers or crew of said boat; and respondents pray the the court to sign and seal this their bill of exceptions, which is accordingly done in term time, this the 28th day of July, A. D. 1866.

[SEAL.] H. CHAMBERLAIN,
Judge City Court of Mobile.

48 *Exhibit A.*

To the Honorable HENRY CHAMBERLAIN,
Judge of the City Court of Mobile County:

The libel and complaint of W. C. Boon, H. K. Love, U. S. Boon, and E. H. Taylor, jr., partners under the name of Boon & Co., against the steamboat Belfast, now lying at the port of Mobile, her tackle, apparel, and furniture, whereof Henry Taylor is master, and against all persons intervening for their interest in the said boat, would respectfully show:

1st. That on or about the 23d day of January, 1866, your libellants shipped on board said boat Belfast, which was a common car-

rier, then lying at Vienna, in the State of Alabama, by U. S. Boon, one of the libellants, acting for himself and said firm, one hundred bales [bales] of cotton, the property of libellants, on said steamboat, at the time being a common carrier, to be transported from Vienna to Mobile, and at Mobile to be delivered to John E. Curran & Co., consignees, they paying freight therefore, at the rate of five dollars per bale, the dangers of the river excepted.

2d. Your libellants further allege that on the way down the river, on the Tombigbee river below Vienna, in the State of Alabama, twenty-nine bales of said cotton was lost, not by the dangers of the river, and was never delivered in Mobile, whereby your libellants have sufferred loss to the extent of fifty-eight hundred dollars.

Therefore, your libellants pray process in admiralty against said steamboat Belfast, her tackle, apparel, and furniture, and that said boat, her tackle, apparel, and furniture, and all persons intervening for their interest therein, be condemned to satisfy the damages aforesaid, and all costs of this libel.

U. S. BOON,
One of the firm of Boon & Co.
DARGAN & TAYLOR,
Proctors.

I hereby acknowlede myself as security for costs in the suit. Witness my hand this 30th day of March, 1866.

JNO. E. CURRAN.

49 THE STATE OF ALABAMA, *Mobile County:*

Personally appeared before me, P. La Vergy, Clerk of the City Court of Mobile, U. S. Boon, who being duly sworn, says on oath, that the several allegations in the above libel and complaint subscribed by him are true in substance and in fact.

Witness my hand, this 30th March, A. D. 1866.

Attest:

P. LA VERGY, *Clerk.*

Exhibit B.

Shipped by U. S. Boon, on board the steamboat called the Belfast, whereof Taylor is master, now in the port of , and bound for Mobile; to say, seventy bales cotton, marks, numbers, and condition excepted, being in good order and well conditioned, marked and numbered as in the margin, (Boon, W. Horton,) and to be delivered, in like good order and condition, (dangers of the river excepted,) unto J. E. Curran & Co., or to assigns, he or they paying freight for the said cotton, at $5 00 per bale.

In witness whereof, I, the said master, or clerk, have affirmed to bills of lading of this tenor and date, one which being accomplished, the others to stand void.

Dated at Vienna, the 23d day of Jan'y, 1866.

S. GOODALL.

Shipped by U. S. Boon, on board the steamboat called the Belfast, whereof Taylor is master, now in the port of
50 and bound for Mobile; to say, thirty bales cotton, order, and condition excepted, being in good order and well conditioned, marked and numbered as in the margin, (Boon, J. W. S., 2; J. D. H., 9; M. K., 3; H. E., M. R.,) and to be delivered in like good order and condition, (dangers of the river excepted,) unto J. E. Curran & Co., or to assigns, he or they paying freight for the said cotton at $5 00 per bale.

In witness whereof, I, the said master, or clerk, have affirmed to bills of lading of this tenor and date, one of which being accomplished, the other to stand void.

Dated at Vienna, the 23d day of Jan'y, 1866.

S. GOODALL.

Exhibit C.

To the Honorable HENRY CHAMBERLAIN,
Judge of the City Court of Mobile:

The libel and complaint of James H. Steers & Schuyler B. Steers, partners in trade, under the name and style of J. H. & S. B. Steers, against the steamboat Belfast, her tackle, apparel, and furniture, and lying at the port of Mobile, whereof Henry Taylor is captain, or master, would respectfully show to your honor:

First. That on the 21st day of January, A. D. 1866, your libellants, by and through C. W. Brown, acting as their agent, shipped at Columbus, Miss., on board said steamer Belfast, being a common carrier, ninety bales of cotton, to be delivered to Messrs. Tarleton, Ledyard & Co., at Mobile, dangers of the river excepted, said consignees paying freight therefor, at the rate of six dollars per bale, for which the clerk of said boat, S. Goodall, gave a bill of lading to the effect above stated.

2nd. That out of the ninety bales so shipped as aforesaid,
51 there were delivered at Mobile only fifty six bales, and the other thirty-four bales were never delivered, but were lost somewhere on the Bigbee river, not by any danger of the river, after the boat had come within the State of Alabama, whereby said cotton was lost to libellants.

They, therefore, pray process in admiralty against said steamboat Belfast, her tackle, apparel, and furniture, and all persons intervening for their interest therein, be condemned to pay to the libellants the value of said thirty-four bales of cotton, which is six thousand dollars, but which your libellants pray may be ascertained by the court, and also in all costs.

SCHUYLER B. STEERS,
One of the firm of J. H. & S. B. Steers.
DARGAN & TAYLOR,
Proctors.

We acknowledge ourselves security for the cost of this libel.
TARLETON, LEDYARD & CO.

March 29th, 1866.

THE STATE OF ALABAMA, *Mobile County*:

Personally appeared before me, P. La Vergy, clerk of the City Court of Mobile, Schuyler B. Steers, who being duly sworn, saith on oath, that the several allegations in the above libel and complaint by him subscribed are true in substance and in fact.

Witness my hand, this 29th day of March, A. D. 1866.

P. LA VERGY, *Clerk*.

Exhibit D.

Shipped by C. W. Brown, on board the steamboat called the Belfast, whereof Taylor is master, now lying in the port of , and bound for Mobile; to say, ninety bales cotton, order and condition excepted, being in good order and well conditioned,
52 marked and numbered as in the margin, (S. & S.) and to be delivered in the like good order and condition, (dangers of the river excepted,) unto Tarleton, Ledyard & Co., or to assigns, he or they paying freight for the said cotton at $6 per bale.

In witness whereof, I, the said master, or clerk, have affirmed to bills of lading of this tenor and date, one of which being accomplished, the others to stand void.

Dated at Columbus, the 21st day of Jan'y, 1866.

S. GOODALL.

Exhibit E.

To the Honorable HENRY CHAMBERLAIN,
Judge of the City Court of Mobile:

The libel and complaint of John Watson & E. H. Taylor, partners in trade, under the name and style of John Watson & Co., against the steamboat Belfast, now lying at the port of Mobile, of which Henry Taylor is master, her tackle, apparel, and furniture, and against all persons intervening for their interest therein, would respectfully show:

1st. That on or about the 21st day of January, 1866, your libellants shipped on board the steamer Belfast, being a common carrier, then lying at Columbus, Miss., one hundred bales of cotton, property of the libellants; the shipment was made at Columbus, Miss., through B. S. Long & Sons, as the agents of your libellants, and said steamboat was then trading on the Bigbee and Mobile rivers in the State of Alabama, as a common carrier, and as such received said one hundred bales of cotton, to be carried to Mobile, and there delivered to John E. Curran & Co., the consignees, they paying freight therefor, the dangers of the river excepted.

2nd. Your libellants further allege, that on the way down
53 the river to Mobile, somewhere in the State of Alabama, thirty-five bales of said cotton was lost, not by any danger of the rivers, and was never delivered in Mobile, whereby your libellants suffered loss to the extent of six thousand dollars.

Therefore, your libellants pray admiralty process against said steamboat, the Belfast, her tackle, apparel, and furniture; that she, her tackle, apparel and furniture and all persons intervening for their interest therein, be condemned to pay the damages aforesaid, together with the costs of this suit.

E. H. TAYLOR, JR.
Of JNO. WATSON & CO.
DARGAN & TAYLOR, *Proctors.*

I hereby acknowledge myself security for costs in this suit. Witness my hand this 30th day of March, 1866.

JNO. E. CURRAN.

THE STATE OF ALABAMA, *Mobile County:*

Personally appeared before me, P. La Vergy, Clerk of the City Court of Mobile, E. H. Taylor, jr., who being duly sworn, says, that the several allegations in the above libel and complaint by him subscribed are true in substance and in fact.

Witness my hand, this 30th day of March, 1866.

P. LA VERGY, *Clerk.*

Exhibit F.

Shipped by B. S. Long & Sons, on board the steamboat called the Belfast, whereof Taylor is master, now in the port of Columbus, and bound for Mobile; to say, one hundred bales cotton, a'c of J. Watson & Co., being in good order and well conditioned, (bagging and rope, and old damage excepted,) marked and numbered as in the margin, (J. W. & Co., 100 bales, one bale in dispute,) to be
54 delivered in the like good order and condition, (dangers of the river and fire excepted,) unto John E. Curran, or to their assigns, he or they paying freight for the said cotton at 6 00 per bale.

In witness whereof, I, the said master or clerk, have affirmed to 3 bills of lading of this tenor and date, one of which being accomplished the others to stand void.

Dated Columbus, the 20 day of January, 1866.

(Signed) S. GOODALL.

Exhibit G.—Protest to the jurisdiction.

To the Honorable HENRY CHAMBERLAIN,
Judge of the City Court of Mobile, in admiralty:

And now, A. F. Hurtel, and Ben. C. Nelson, in person intervening for their interest in the steamer Belfast, appear before this honorable court and show to your honor, that they are sole owners of said boat, and further show to your honor, that the cases now pending in this honorable court, wherein J. H. & S. B. Steers are libellants, against the steamer Belfast, and John Watson & Co. libellants, vs. Steamer Belfast, ought not to be entertained, because the con-

tract of affreightment upon which said libels are founded were entered into in the State of Mississippi, and without the jurisdiction of this hon. court.

That said contract of affreightment being made in the State of Mississippi and without the jurisdiction of this hon. court, and that this court should not take jurisdiction of said cases.

(Signed) A. F. HURTEL.

Sworn to and subscribed by A. F. Hurtel, one of the owners of said boat before me, this 1st day of May, 1866.

P. LA VERGY, *Clerk.*

55 *Exhibit H.*

City Court of Mobile in admiralty, first Monday in May, 1866.

To the Honorable HENRY CHAMBERLAIN,
Judge of the City Court of Mobile:

And now, Ben. C. Nelson, and A. F. Hurtel, intervening for their interest in the steamer Belfast, appear before this hon. court, and for answer to libel and complaint of W. C. Boon, A. K. Love, U. S. Boon, and C. H. Taylor, junior, partners, under the name and style of Boon & Co. against the steamboat Belfast, now lying at the port of Mobile, her tackle, apparel and furniture, and against all persons lawfully intervening for their interest therein alleges and articulately propound as follows:

First. That respondents are the owners of said steamboat Belfast, and were the owners of said boat on the 20th of January, 1866, and up to and until the present time; that McHenry Taylor was capt. of said boat on the 21st of January, 1866, and continued to be until said boat was libelled and tied up, to wit, on day of 1866.

Second. Respondents are informed that one U. S. Boon, at Vienna, on the 23d of January, 1866, shipped one hundred bales of cotton on board said boat to J. E. Curran & Co., in Mobile, at and for the price of five dollars per bale as freight; that bills of lading were given therefore by S. Goodall, as clerk of said boat.

Third. Respondents are informed that said boat left Columbus for Mobile, on the morning of the 22d January, 1866; that said boat descended said river until she reached a point about five miles below Coffeeville, at Malone's gin, at which time she had on board a number of passengers and five hundred and ninety-five bales of cot-
56 ton, consigned to different firms in Mobile. That near said gin-house, between 9 and 10 o'clock p. m., on the 25th day of January, 1866, a party of men on the east bank of the river hailed said boat with a light, as is usual on said river; the capt. who was at the wheel at the time, had the engine stopped and asked what was wanted; they replied they had freight to go on board. The capt. informed them he could not take any more freight. They then informed the capt. that there were passengers to go aboard. The capt. informed them that he could not accommodate any more pas-

sengers. By this time said boat was within twenty or thirty yards of the bank, when about twenty armed men cocked their guns and leveled them at the boat, and said to the capt. that if he did not land the boat that they would fire into her; being satisfied that the threat would be carried into execution, and fearing a destruction of life and property, and hoping to save said boat and cargo, the capt. landed said boat as ordered, when a man by the name of Britton came aboard and asked the capt. if there were any Yankees aboard; the capt. said that there were no Yankees aboard that he knew of. Britton then demanded the surrender of the boat; he replied that she could not be surrendered, when Britton cried out: "Boy's come aboard," when about twenty armed men came aboard, all disguised by having their faces blacked; Britton again demanded the surrender of said boat; the capt. refused to surrender her, and was then surrounded by said armed men and arrested by them. The capt. was then ordered by Britton to go to the wheel. The capt. replied that he would die first. They then marched the capt. to his office, made him go into the office and locked the door, and put an armed guard over him, and took forcible possession of said cotton, boat, &c.

Fourth. Respondents are informed that an armed body of men went to E. H. Gerdy, the pilot, and compelled him by force of arms to go to the wheel, and the engineers were likewise compelled
57 to get up steam on said boat by said armed men, and said boat was started down the river. That said armed men put off cotton at different places on the river, as the boat went down; that said boat was taken into the cut-off by said armed men as aforesaid, on Sunday morning, the 28th of January, 1866, she was there tied up until near night and then started up the river, and about 8 o'clock p. m., at the lower end of McIntosh's Bluff, the boat was landed and the capt. driven ashore by said armed men; that said boat was then moved up the river a distance of about 8 miles, where both clerks were driven ashore by said armed men; the said boat was then moved up the river to a place called Beckham's L'd'g, where another lot of cotton was put off. The said boat was then turned over and delivered to the mate and pilot. The said boat was then rounded to to go down the river, but as she rounded to she was fired into by a party on shore, several of the shot or balls passing through the pilot house. The said boat was landed and enquiry made as to why she was fired into, to which the parties on shore replied, that they thought the persons on said boat wanted to steal the cotton on the bank. Said boat was then started down the river, took on the clerks, then the capt., when she was put under charge of the capt., who moved the boat a short distance below to the mouth of the bayou, just above the junction of the rivers where he found the steamboat Marengo taking a portion of the cotton that had been put off the Belfast. That in a short time a gun-boat of the United States came up under charge of an officer of the United States; that said officer took charge of said steamer Belfast and ordered the capt. to go up the river to Payne's L'd'g and to take on board all the cotton that could be found that had been taken from the Belfast. This was

done, and the said boat then proceeded to Mobile under charge of said United States officer. That said boat reached Mobile on morning of 31st of January, 1866. That Capt. Taylor and the
58 officers of said boat afterwards entered a protest in due form, a copy of which is hereto attached and marked exhibit (A,) and made a part of this answer. The original will be produced upon the trial if required. That the whole matter was investigated by the military authorities in pursuance of an order of Major Gen. C. R. Wood, comm'd'g the district of Alabama. That the officers of said boat were discharged and those who committed the robbery kept or held for trial. That some of them have been convicted for robbing said boat and sentenced, and others held under bond for trial; all the evidence, proceedings, &c., will be exhibited to this hon. court if required.

Fifth. Respondents are informed that said steamboat was delivered by the military authorities to Charles Briggs & Co., as the agents of the owners, on the evening of the 31st of January, 1866. That all the cotton shipped on said boat at Columbus and intermediate landings, as aforesaid, was then, and at different times since, delivered to the different consignees thereof, except from thirty-eight to forty-three bales. That there are two other cases pending in this honorable court against said boat for cotton said to have been lost on said downward trip as aforesaid, one for the value of thirty bales, and for the value of thirty-four bales.

Sixth. Respondents are informed that on the 9th day of February, fifty-nine bales of said cotton which had been recaptured after it had been taken from said steamer Belfast, was turned over and delivered by Charles Briggs & Co., as agents of said boat. That owing to the fact that the marks on the cotton having been defaced, and in some instances the bagging partly cut-off, that it was agreed that it would be received and distributed among the consignees, pro rata; that a copy of said receipt is hereto attached and marked Exhibit (B,) and is made a part of this answer. The original will be produced upon the trial if required.

Seventh. Respondents are informed that the tide ebbs and
59 flows some distance above the point where said boat was captured as aforesaid. That the officers and crew had no arms, but acted in good faith and did all in their power to save said boat and cargo. That said boat and cargo was captured by a number of lawless roving robbers, at a point on the Bigbee river where the tide ebbs and flows and within the admiralty jurisdiction of the United States. That by an act of the Congress of the United States said act of robbery is declared to be piracy, and that the boat nor owners are liable for the act as aforesaid, if the officers and crew acted in good faith and done all in their power to save said boat and cargo.

Eighth. Respondents are informed that it is the universal practice and understanding amongst steamboat men navigating the waters of the Bigbee river, that when cotton is received by a boat to be transported to Mobile, if she should be captured by an armed force with-

out any fault or neglect of the officers and crew, that in such case the boat nor owners are liable for such loss.

Ninth. That all and singular the premises are true as respondents are informed and believe, in verification whereof, if denied, respondents crave leave to refer to the depositions and other proofs to be by them exhibited in this cause.

Wherefore, respondents pray, that this hon. court would be pleased to pronounce against the libel aforesaid, and to condemn the libellants in costs, and otherwise right and justice administer in the premises.

A. F. HURTEL.
BOYLES & OVERALL,
Proctors for respondents.

Sworn to by A. F. Hurtel, one of the respondents, before me, this 1st day of May, A. D. 1866.

P. LA VERGY, *Clerk.*

60 *Exhibit A.*

STATE OF ALABAMA, *County and City of Mobile, ss:*

By this public instrument of declaration and protest, be it made known and manifest to all whom it may concern, that on the 20th day of February, 1866, before me, J. S. Secor, public notary in and for the county of Mobile, in the State of Alabama, duly and by lawful authority commissioned and qualified, and residing in the city of Mobile and State aforesaid, personally appeared M. H. Taylor, master of the steamer Belfast, of Mobile, and noted with me in due form of law, his protest for the uses and purposes hereinafter mentioned. And now, on this day, to wit, the 3rd of April, 1866, before me, the said notary, again came the said M. H. Taylor, and requires me to extend his said protest, and together with him come and appear E. H. Gordy, Robt. W. Patterson, second engineer, and A. S. Chamberlain, 1st engineer, and P. S. Taylor, carpenter, all belonging to the aforesaid steamer, all of whom being by me severally, duly and solemnly sworn on the Holy Evangelist of Almighty God, voluntarily and freely depose and say, that the said steamer laden with cotton sailed from Columbus, Mississippi, on the 23rd of January last, bound for Mobile, and proceeded down the Tombigbee without anything unusual occurring until between 9 and 10 o'clock, Jan'y 25th, when said steamer was opposite Malone's gin-house, about five miles below Coffeeville, the master was hailed from the opposite shore and asked first to land and take cotton, and on being told that the boat was loaded asked that she would land and take passengers, and being answered that the boat had no accommodations for them, the master was ordered in a peremptory manner to land the boat. Having no means of protecting the boat the master deemed it best to land, supposing as the cargo of cotton all belonged to private parties and not to the U. S. government, the men who he supposed to be guerillas, would not disturb it, and he accordingly run her into shore;

61 she was at once boarded by a man who examined the bills of lading for the cotton, and although he found no government cotton he determined upon unloading the boat, and called his companions on board (twelve or fifteen in number.) He then ordered the master to the wheel, who refusing, the pilot was sent to the wheel under guard, and they locked the master in his room. The steamer was then run down about half mile when she was landed and a quantity of cotton landed. She was then run down to the mouth of Hatchatigbee lake, and more cotton was landed; she was then run to Beckham's landing and more cotton was landed. From thence she was taken to Carney's Bluff and more bales of cotton was landed; then to Payne's wood-yard, and thence to a bayou just about the junction of the Alabama and Tombigbee rivers, and cotton was landed at each place. This occupied all the time until the morning of the 28th, when she was started back up the river and taken into the "cut off," where she remained all that day, and just at night came out of the "cut off" and proceeded up to Payne's wood-yard, having ordered and compelled the master to go ashore at McIntosh's Bluff. At about two o'clock of the morning of the 29th, they released the boat to the mate. Between 8 and 9 o'clock the master rejoined the boat at McIntosh's Bluff, and proceeded to the mouth of the bayou above spoken of, and found the steamer Marengo taking on board the cotton landed from the Belfast. While there a gun-boat came up and took charge of both steamers; ordered the Belfast back up the river where she received one hundred bales of cotton at Payne's wood-yard, returned to the bayou; found the Marengo gone; took on twenty-eight bales of cotton left by the Marengo, and proceeded to Mobile in the custody of the gun-boat and arrived on the 30th. And the

62 said deponents, on their oaths, declare that said steamer was at the commencement of the voyage aforesaid, staunch and strong, and had her cargo well and sufficiently stored and her hatches properly closed and secured; and that during the said voyage they, together with the rest of the crew on board, used their utmost endeavors to preserve said steamer and her cargo, tackle, apparel from damage or injury, and that any damage, loss or injury which has arisen or accrued, or that may arise or be sustained in any way or manner whatever, is solely owing to the accidents or difficulties herein set forth and declared, and not to any negligence, want of skill, vigilance or exertion on the part of the deponents, or any of the officers or men of the said steamer.

(Signed) M. H. TAYLOR.
E. H. GORDY, *Pilot.*
W. B. PATTERSON, *2nd Engineer.*
A. S. CHAMBERLAIN, *1st Engineer.*
P. S. TAYLOR, *Carpenter.*

Wherefore, the said M. H. Taylor, master and commander as aforesaid, hath requested me to protest, and I, the said notary, at such, his request, have protested, and by the protests do publish and solemnly protest against all and every person and persons, whom it

doth, shall, or may concern, and against all and singular the accidents, casualties and circumstances already set forth in the foregoing declaration on oath, for all manner of losses, costs, damages, charges, expenses and injuries whatever, which the said steamer and her cargo on board, and the freight by her earned, or either of them, or any part thereof, have already sustained or may hereafter sustain by reason or means of the foregoing premises. This done and protested in the city of Mobile, this third day of April, 1866.

In testimony, whereof, I have hereunto set my hand, and affixed my notarial seal.

[SEAL.] J. S. SECOR, *Notary.*

Exhibit B.

Received, Mobile, February eighth, of Messrs. Charles
63 Briggs, & Co., an order on shippers' warehouse, for fifty-nine bales of cotton, which order is in favor of William J. Ledyard, and John E. Curran; said delivery is a good delivery as to said cotton by said Briggs & Co. to each and all of us as consignees of cotton by steamer Belfast. Said Briggs & Co. are consignees and agents, and we hereby agree that said Ledyard & Curran shall receive the cotton for and on account of us, and that they shall make a pro rata distribution thereof among us, according to our respective interests as consignees, owing to the fact that the marks have been disfigured, as render it impossible to determine which particular cotton belongs to each of the undersigned; and we agree that said Ledyard & Curran shall pay, and bind ourselves that they shall pay the freight, charges and expenses that have accrued on said cotton, from the proceeds of the cotton.

(Signed) TARLETON, LEDYARD & CO.
JOHN E. CURRAN & CO.
BAKER, GRAHAM & CO.
WHITFIELD, BILLAP & CO.
W. H. SEINKAUP & CO.
FOSTER & GARDNER.

Exhibit I.

The City Court of Mobile, in Admiralty, first Monday in May, 1866.

To the Honorable HENRY CHAMBERLAIN,
Judge of the City Court of Mobile:

And now come Ben. C. Nelson and A. F. Hurtel, intervening for their interest in the steamer Belfast, appear before this hon. court, and for answer to the libel and complaint of Schuyler B. Steers, and J. B. Steers, partners in trade, under the name and style of J. H. & S. B. Steers, against said steamboat, and against all persons intervening for their interest therein, alleges and articulately propound, as follows:

64 First. That respondents are the owners of said steamboat

Belfast, and were the owners of said boat on the 21st Jan'y, 1866, and up to and until the present time. That McHenry Taylor was the capt. of said boat on the 21st of Jan'y, 1866, and continued to be until said boat was libelled and tied up, to wit: on the day of , 1866.

Seconds. Respondents are informed, that one C. W. Brown, at Columbus, in the State of Mississippi, on the 21st day of January, 1866, shipped ninety bales of cotton on board said boat, marked S. & S. to Tarleton, Ledyard & Co , at Mobile, at and for the price of six dollars per bale freight; that a bill of lading was given therefor, by S. Goodall, clerk of said boat.

Third. Respondents are informed that said boat left Columbus for Mobile, on the morning of the [morning of] 22nd Jan'y, 1866; that said boat descended said river until she reached a point about five miles below Coffeeville, at Malone's gin, at which time she had on board a number of passengers, and five hundred and ninety-five bales of cotton, consigned to different firms in Mobile. That near said gin-house, between 9 and 10 o'clock, p. m., on the 25th day of January, 1866, a party of men on the east bank of the river hailed said boat with a light, as it is usual on said river. The capt. who was at the wheel, at the time, had the engines stopped, and asked what was wanted; they replied, they had freight to go on board; the capt. informed them that he could not take any more freight. They then informed the capt. that there were passengers to go aboard. The capt. informed them that he could not accommodate any more passengers. By this time said boat was within twenty or thirty yards from the bank, when about twenty armed men cocked their guns and levelled them at the boat, and said to the capt. that if they did not land the boat, that they would fire into her. Being satisfied that the threat would be carried into execution, and fearing a destruc-
65 tion of life and property, and hoping to save the boat and cargo, the capt. landed the boat, as ordered, when a man, by the name of Britton, came aboard and asked the capt. if there were any Yankees aboard; the capt. informed him that there were no Yankees aboard, that he knew of. Britton then demanded the surrender of the boat; the capt. informed him that she would not be surrendered; when Britton cried out, "Boys come aboard;" when about twenty armed men came aboard, all disguised by having their faces blacked. Britton again demanded the surrender of said boat. The capt. refused to surrender her, and was then surrounded by said armed men, and arrested. The capt. was ordered by Britton to go to the wheel; the capt. replied that he would die first. Then they marched the capt. to the office, put him in the office, locked the door, and put an armed guard over the capt., and took forcible possession of said boat, cotton, &c.

Fourth. Respondents are informed that an armed body of men went to E. H. Gordy, the pilot, and compelled him by force of arms to go to the wheel, and the engineers were likewise compelled to get up steam on said boat by said armed men, and said boat was started down the river. That said armed men put off cotton at different

places on the river as the boat went down; that said boat was taken into what is called the "cut-off" by said armed men as aforesaid, on Sunday morning, the 28th day of January, 1866. She was then tied up until near night and then started up the river, and about 8 o'clock p. m., at the lower end of McIntosh's Bluff, the boat was landed and the capt. driven ashore by said armed men; that said boat was then moved up the river, to a place called Beckham's L'd'g, where another lot of cotton was put off; the said boat was then turned over and delivered to the mate and pilot. The said boat then rounded to to go down the river, but as she rounded to she was fired
66 into from a party on shore; several of the shot or balls passed through the pilot-house. The said boat was landed, and inquiry was made as to why she was fired into; to which the parties on shore replied that they thought the persons on said boat wanted to steal the cotton on the bank.

Said boat was then started down the river, took on the clerks, and then the capt., when she was put in charge of the capt., who moved the boat a short distance below to the mouth of a bayou just above the junction of the rivers, where she found the steamer Marengo taking in a portion of the cotton that had been put off the Belfast. That in a short time a gun-boat of the United States came up under charge of a United States officer; that said officer took charge of said steamer Belfast, and ordered the capt. to go up the river to Payne Landing, and to take on board all the cotton that could be found that had been taken from the Belfast. That was done, and the boat then proceeded to Mobile under charge of said United States officer. That the said boat reached Mobile on the morning of the 31st of January, 1866. That Capt. Taylor, and the officers of said boat, afterwards entered a protest in due form, a copy of which is hereto attached and made a part of this answer. The original will be produced if required. That the whole matter was investigated by the military authorities, in pursuance of an order from Major Gen'l Wood, commanding the district of Alabama; that the officers of said boat were discharged, and those who committed the robbery kept and held for trial; that some of them have been convicted for robbing said boat, and sentenced, and others held under bond for trial. All the evidence and proceedings, proofs, &c., will be exhibited to this hon. court if required.

Fifth. Respondents are informed that said steamboat was delivered to Charles Briggs & Co., as the agents of the owners, on the evening of the 31st of January, 1866; that all the cotton shipped on said steamer at Columbus and intermediate landings as aforesaid, was then, and at different times since, delivered to different con-
67 signees thereof, except from thirty-eight to forty-three bales; that there are two other cases pending in this hon. court against said boat for cotton said to have been lost on said downward trip—one for the value of twenty-nine bales, and one for the value of thirty-five bales.

Sixth. Respondents are informed that on the 9th day of February, fifty-nine bales of said cotton, which had been recaptured after it

had been taken from said steamer Belfast, was turned over and delivered by Charles Briggs & Co. as agents of the boat; that owing to the fact that the marks on the cotton having been defaced, and in some instances the bagging partly cut off, it was agreed that it would be received and distributed among the consignees, pro rata; that a copy of said receipt is hereto attached and marked Exhibit B, and is made a part of this answer; the original will be produced upon the trial if required.

Seventh. Respondents are informed that the tide ebbs and flows some distance above the point where said boat was captured as aforesaid; that the officers and crew had no arms, but acted in good faith and done all in their power to save said boat and cargo; that said boat and cargo was captured by a number of lawless, roving robbers, at a point on the Bigbee river where the tide ebbs and flows, and within the admiralty jurisdiction of the United States; that by an act of the Congress of the United States, said act of robbery is declared to be piracy, and that the boat nor owners are liable for the act as aforesaid, if they acted in good faith and done all that could be done to save said boat and cargo.

Eighth. Respondents are informed that it is the universal practice and understanding amonst steamboat men navigating the water of the Bigbee river, that when cotton is received by a boat to be transported to Mobile, if she should be captured by an armed force, without any fault or neglect of the officers and crew, that in such case, the boat nor owners are liable for such loss.

Ninth. That this honorable court has not jurisdiction, and
68 ought not to proceed to enforce the claim alleged in the libel aforesaid, against the said steamboat Belfast, or against them, the respondents, intervening for their interest therein.

Tenth. That all and singular the premises are true, as respondents are informed and believe, in verification whereof, if denied, respondents crave leave to refer to the depositions and other proofs to be by them exhibit in this cause.

Wherefore, respondents pray that this hon. court would be pleased to pronounce against the libel aforesaid, and to condemn the libellants in costs, and otherwise right and justice administer in the premises.

A. F. HURTEL.
BOYLES & OVERALL,
Proctors for Respondents.

Sworn to by A. F. Hurtel, of the respondents, before me, this 1st day of May, A. D. 1866.

P. LA VERGY, *Clk.*

Copy of protest, being Exhibit A to answer.

STATE OF ALABAMA, *Mobile County:*

By this public instrument of declaration and protest, be it made known and manifest to all whom it may concern, that on the 20th day of February, 1866, before me, Joshua Secor, public notary in and

for the county of Mobile, in the State of Alabama, duly and by lawful authority commissioned and qualified, and residing in the city of Mobile and State aforesaid, personally appeared M. H. Taylor, master of the steamer Belfast, of Mobile, and noted with me, in due form of law, his protest for the uses and purposes hereinafter mentioned. And now on this day, to wit, the 3d day of April, 1866, before me, the said notary, again comes the said M. H. Taylor, and requires me to extend his said protest, and together with him come and appear,

E. H. Gordy, pilot, W. B. Patterson, 2d engineer, and
69 A. S. Chamberlain, 1st engineer, and P. S. Taylor, carpenter,

all belonging to the aforesaid steamer, all of whom being by me, severally, duly, and solemnly on the Holy Evangelist of Almighty God, voluntarily and freely depose and say, that the said steamer, laden with cotton, sailed from Columbus, Miss., on the 23d day of January last, bound for Mobile, and proceeded down the Tombigbee without anything unusual occurring until between 9 and 10 o'clock, p. m., January 25th, when said steamer was opposite Malone's gin-house, about five miles below Coffeeville, the master was hailed from the opposite shore, and asked first to land and take cotton, and being told that the boat was loaded, asked that she would land and take passengers, and being answered, that the boat had no accommodations for them, the master was ordered in a very peremptory manner to land the boat. Having no means of protecting the boat, the master deemed it best to land, supposing that as the cargo of cotton all belonged to private parties, and not to the United States government, the men, who he supposed to be guerrillas, would not disturb it, and accordingly ran her into shore. She was at once boarded by a man who examined the bills of lading for the cotton, and although he found no government cotton, he determined upon unloading the boat, and called his companions on board, between twelve and fifteen in number; he then ordered the master to the wheel, who refusing, the pilot was sent to the wheel under a guard, and they locked the master in his room. The steamer was then run down about a half mile, when she was landed, and a quantity of the cotton landed. She was then run down to the mouth of Hatchatigbee Lake, and more cotton was landed; she was then run to Beckham's Landing, and more cotton was landed; from thence she was taken to Corney's Bluff, and more cotton landed; then to Payne's woodyard, and from thence to a bayou

just above the junction of the Alabama and Tombigbee rivers,
70 and cotton was landed at each place. This occupied all the

time, until the morning of the 28th, when she was started back up the river, and taken into the "cut-off," where she remained all that day, and just at night came out of the cut-off and proceeded up to Payne's woodyard; having ordered and compelled the master to ashore at McIntosh's Bluff. At about two o'clock on the morning of the 29th they released the boat to the mate; between 9 and 10 o'clock the master rejoined the boat at McIntosh's Bluff, and proceeded to the mouth of the bayou above spoken of, and found the steamer Marengo taking on board the cotton landed from the Belfast; while there a gun-boat came up, and her officer took charge of both

steamers, ordered the Belfast back up the river, where she received one hundred bales of cotton at Payne's woodyard: returned to the bayou, found the Marengo gone; took in twenty-eight bales left by the Marengo, and proceeded to Mobile in the custody of the gunboat, and arrived on the 30th. And said deponents, on their oaths, declare that said steamer was at the commencement of the voyage aforesaid staunch and strong, had her cargo well and sufficiently stored, and her hatches properly closed and secured, and during the said voyage they, together with the rest of the crew on board, used their utmost endeavors to preserve said boat and her cargo, tackle, and apparel from damage or injury. And that any loss, damage or injury which has arisen or accrued, or that may arise and be sustained, in any way or manner whatever, is solely owing to the accidents and difficulties herein set forth and declared, and not to any negligence, want of skill, vigilance or exertion on the part of the deponents, or any of the officers or men of the said steamer.

(Signed) M. H. TAYLOR.
E. H. GORDY, *Pilot.*
W. B. PATTERSON,
2nd Engineer.
A. S. CHAMBERLAIN,
1st Engineer.
P. S. TAYLOR,
Carpenter.

71 Wherefore the said M. H. Taylor, master and commander as aforesaid, hath requested me to protest, and I, the said notary, at such his request, have protested, and by these presents do publicly and solemnly protest against all and every person, and persons, whom it doth, shall, or may concern, and against all and singular the accidents, causalties and circumstances already set forth in the foregoing declaration on oath, for all manner of losses, costs, damages, charges, expenses, and injuries whatever, which said steamer and her cargo on board, and the freight by her earned, or either of them, or any part thereof, have already sustained or may hereafter sustain by reason or means of the foregoing premises.

Thus done and protested in the city of Mobile, this third of April, 1866.

In testimony whereof, I have hereunto set my hand, affixed my notarial seal.

(Signed) J. S. SECOR, *Notary.*

Exhibit B to answer.

Received, Mobile, February eighth, of Messrs. Chas. Briggs & Co., an order on shipper's warehouse, for fifty-nine bales of cotton, which order is in favor of W. J. Ledyard and John E. Curran, said delivery is a good delivery of said cotton by said Briggs & Co. to each and all of us, as consignees of cotton by steamer Belfast, of which steamer said Briggs & Co. are the consignees and agents; and we hereby agree

that the said Ledyard & Curran shall receive the cotton for, and on account of each of us, and that they shall make a pro rata distribution thereof amongst us, according to our respective interests as consignees, owing to the fact that the marks have been disfigured as to render it impossible to determine which particular cotton to each of the undersigned; and we agree that said Ledyard & Curran shall pay and bind ourselves that they shall pay the freight, charges, and expenses that have accrued on said cotton from the proceeds of the cotton.

(Signed) TARLETON, LEDYARD & CO.
JOHN E. CURRAN & CO.
BAKER, GRAHAM & CO.
W. H. SEINKAUF & CO.
FOSTER & GARDNER.

72 *Exhibit J.*

City Court of Mobile, in admiralty.—First Monday in May, 1866.

To the Honorable HENRY CHAMBERLAIN,
Judge of the City Court of Mobile:

And now, Ben. C. Nelson and A. F. Hurtel, intervening for their interest in the steamer Belfast, appear before this hon. court, and for answer to the libel and complaint of John Watson and E. H. Taylor, partners in trade, under the name and style of John Watson & Co., against said boat, and against all persons lawfully intervening for their interest therein, allege and articulately propound as follows:

First. That respondents are the owners of the said steamboat Belfast, and were the owners of said boat on the 20th day of January, 1866, and up to and until the present time; that McHenry Taylor was the capt. of said boat on the 21st of Jan'y, 1866, and continued to be until said boat was libelled and tied up, to wit, on the day of , 1866.

Second. Respondents are informed that B. S. Long & Sons did, on or about the 20th of January, 1866, ship ninety-nine bales of cotton, (and one in dispute,) on board said boat at Columbus, in the State of Mississippi, marked J. W. & Co. to J. E. Curran & Co., at Mobile, at and for the price of six dollars per bale freight; that a bill of lading was given therefor by S. Goodall, as clerk of said boat.

Third. Respondents are informed that on or about the morning of the 22d of January, 1866, that said boat descended the river until she reached a point about five miles below Coffeeville, at Malone's gin, at which time she had on board a number of passengers, and five hundred and ninety-five bales of cotton, consigned to different firms in Mobile; that near said gin-house, between 9 and 10 o'clock p. m., on the 25th day of January, 1866, a party of men on the east bank of the river hailed said boat with a light, as is usual on said river. The capt., who was at the time at the wheel, had the
73 engines stopped, and asked what was wanted. They replied

they had freight to go aboard. The capt. informed them that he could not take any more freight. They then informed the capt. that there were passengers to go aboard. The capt. informed them that they could not accommodate any more passengers. By this time said boat was within from twenty to thirty yards of the shore, when about twenty armed men cocked their guns and levelled them at the boat, and said to the capt. that if he did not land the boat, that they would fire into her. Being satisfied that the threat would be carried into execution, and fearing a destruction of life and property, and hoping to save the boat and cargo, the capt. landed the boat as ordered, when a man by the nameof Britton came aboard and asked the capt. if there were any Yankees aboard. The capt. informed him that there were none aboard that he knew of. Britton then demanded the surrender of the boat. The capt. told him that she would not be surrendered, when Britton cried out, "Boys, come aboard," when about twenty armed men came aboard, all disguised by having their faces blacked. Britton again demanded the surrender of said boat. The capt. still refused to surrender her, and he was then surrounded by said armed men and arrested. The capt. was ordered to go to the wheel by Britton. He refused to go, and said he would die first. Then they marched the capt. to his office, drove him into it and locked the door, and put an armed guard at the front and back doors of said office, and took forcible possession of said cotton and boat, &c.

Fourth. Respondents are informed that an armed body of men went to E. H. Gordy, the pilot, and compelled him by force of arms to go to the wheel; and the engineers were likewise compelled to get up steam on said boat by said armed men, and said boat was started down the river; that said armed men put off cotton at different places on the river, as the boat went down; that said boat was taken into the cut-off by said armed men, as aforesaid, on Sun-
74 day morning, the 28th day of January, 1866. She was then tied up until near night, and then started up the river, and 8 o'clock p. m., at the lower end of McIntosh's Bluff, the boat was landed and the capt. driven ashore by said armed men; that said boat was then moved up the river a distance of about eight miles, when both the clerks were driven ashore. Said boat was then moved up the river to a place known as Beckham's Landing, where another lot of cotton was put off. The said boat was then turned over to the mate and pilot by said armed men. The said boat then rounded to to go down the river; but as she was rounding to she was fired into from a party on shore. Several of the shot or balls passed through the pilot house. The said boat was immediately landed, and inquiry made as to why she was fired into, to which the parties on shore replied that they, the persons on said boat, wanted to steal the cotton on the bank. Said boat was then started down the river, took on the clerks and the capt., when she was put in charge of the capt., who moved the boat a short distance down the river to the mouth of a bayou, just above the junction of the rivers, where he found the steamer Marengo taking on a portion of the cotton that had been

taken from the Belfast; that in a short time a gun-boat of the United States came up, under charge of [of] an officer of the United States; that said officer took charge of said steamer Belfast, and ordered the capt. to go up the river to Paynes l'd'g, and to take on board all the cotton that could be found that had been taken from the Belfast. This was done, and the said boat then proceeded to Mobile under charge of said United States officer; that the said boat reached Mobile on the morning of the 31st of January, 1866; that Capt. Taylor and officers of said boat afterwards entered a protest in due form, a copy of which is hereto attached, and marked exhibit A. The original will be produced upon the trial if required. That the whole
75 matter was investigated by the military authorities, in pursuance of an order made by Major Gen'l C. R. Wood, commanding the district of Alabama; that the officers of said boat were discharged, and those who committed the robbery kept or held for trial; that some of them have been convicted for robbing said boat and sentenced, and others held under bond for trial. All the evidence, proceedings and proofs, &c., will be exhibited to this honorable court if required.

Fifth. Respondents are informed, that said steamboat was delivered up to Chas. Briggs & Co., as the agent of the owners, on the evening of the 31st of January, 1866; that all the cotton shipped on said boat at Columbus and intermediate landings, as aforesaid, was then, and at different times since, delivered to the different consignees thereof, except from thirty-eight to forty-three bales; that there are two other cases pending in this hon. court against said boat for cotton said to have been lost on said downward trip: one for the value of twenty-nine bales of cotton, and one for the value of thirty-four bales of cotton.

Sixth. Respondents are informed that on the 9th day of February, fifty-nine bales of said cotton, which had been recaptured after it had been taken from said steamer Belfast, was turned over and delivered by Chas. Briggs & Co., as agents of the boat; that owing to the fact that the marks on the cotton having been defaced, and in some instances the bagging partly cut off, that it was agreed that it would be received and distributed among the consignees, pro rata; that a copy of said receipt is hereto attached and marked Exhibit (B,) and is made a part of this answer. The original will be produced upon the trial if required.

Seventh. Respondents are informed, that the tide ebbs and flows some distance above the point where said boat was captured, as aforesaid; that the officers and crew had no arms, but acted
76 in good faith, and done all in their power to save said boat and cargo; that said boat and cargo was captured by a number of lawless, roving robbers, at a point on the Bigbee river where the tide ebbs and flows, and within the admiralty jurisdiction of the United States; that by an act of the Congress of the United States, said act of robbery is declared to be piracy, and the boat nor owners are liable for the act as aforesaid, if the officers of said boat acted in good faith and did all in their power to save said boat and cargo.

Eighth. Respondents are informed, that it is the universal practice and understanding amongst steamboat men navigating the waters of the Bigbee river, that when cotton is received by a boat to be transported to Mobile, if she should be captured by an armed force without any fault or neglect of the officers and crew, that in such case the boat nor owners are liable for such loss.

Ninth. Respondents are informed that this honorable court has not jurisdiction, and ought not to enforce the claim alleged in the libel aforesaid against the said steamboat Belfast, or against them, the respondents, intervening for their interest therein.

Tenth. That all and singular the premises are true, as the respondents are informed and believe; in verification whereof, if denied, respondents crave leave to refer to the depositions and other proofs to be by them exhibited in this cause.

Wherefore, respondents pray that this hon. court would be pleased to pronounce against the libel aforesaid, and to condemn the libellants in costs, and otherwise right and justice administer in the premises.

A. F. HURTEL.
BOYLES & OVERALL,
Proctors for Respondents.

Sworn to by A. F. Hurtel, one of the respondents, before me, this 1st day of May, A. D. 1866.

P. LA VERGY, *Clerk.*

77 *Exhibit (A) to answer.*

STATE OF ALABAMA, *County and City of Mobile, ss:*

By this public instrument of declaration and protest, be it made known and manifest to all whom it may concern, that on the 20th day of February, 1866, before me, J. S. Secor, public notary in and for the county of Mobile, in the State of Alabama, personally appeared M. H. Taylor, master of the steamer Belfast, of Mobile, and noted with me in due form of law, his protest, for the uses and purposes hereinafter mentioned. And now on this day, to wit, the third day of April, in the year 1866, before me, the said notary, again comes the said M. H. Taylor, and requires me to extend his said protest; and together with him come and appear, E. H. Gordy, pilot, W. B. Patterson, second engineer, and A. S. Chamberlain, 1st engineer, and P. S. Taylor, carpenter, all belonging to said steamer, all of whom being by me, severally, duly and solemnly sworn on the Holy Evangilist of Almighty God, voluntarily and freely depose and say, that the said steamer, laden with cotton, sailed from Columbus, Miss., on the 23d day of January last, bound for Mobile, and proceeded down the Tombigbee, without any thing unusual occurring, until between 9 and 10 o'clock, p. m., January 25th, when said steamer was opposite Malone's gin-house, about five miles below Coffeeville, the master was hailed from the opposite shore, and asked, first to land and take cotton, and on being told that the boat was loaded, asked that she would land and take passengers, and being answered that the boat had no accommodation for them, the master was ordered in a

very peremptory manner to land the boat. Having no means of protecting the boat, the master deemed it best to land, supposing that as the cargo of cotton all belonged to private parties, and not to the United States government, the men, who he supposed to be
78 guerrillas, would not disturb it, and accordingly run her into shore. She was at once boarded by a man, who examined the bills of lading for the cotton, and although he found no government cotton, he determined upon unloading the boat, and called his companions on board, (twelve or fifteen in number). He then ordered the master to the wheel, who refusing, the pilot was sent to the wheel under a guard, and they locked the master in his room. The steamer was then run down about a half mile, where she was landed, and a quantity of cotton was landed. She was then run down to the mouth of Hatchatigbee lake, and more cotton was landed. She was then run to Beckham's L'd'g, and more cotton was landed; from thence she was taken to Carney's Bluff, and more cotton landed; then to Payne's woodyard, and from thence to a bayou, just above the junction of the Alabama and Tombigbee rivers, and cotton was landed at each place. This occupied all the time, until the morning of the 28th, when she was started back up the river, and taken into the cut-off, where she remained all that day, and just at night come out of the cut-off, and proceeded up to Payne's woodyard, having ordered and compelled the master to go ashore at McIntosh's Bluff. At about two o'clock on the morning of the 29th, they released the boat to the mate. Between 8 and 9, a. m., the master rejoined the boat at McIntosh's Bluff, and proceeded to the mouth of the bayou above spoken of, and found the steamer Marengo taking on board the cotton landed from the Belfast. While there, a gunboat came up, and her officers took charge of both steamers; ordered the Belfast back up the river, where she recovered one hundred bales of cotton at Payne's woodyard, returned to the bayou, found the Marengo gone; took on twenty-eight bales of cotton left by the Marengo and proceeded to Mobile in custody of the gun-boat, and arrived on the 30th.

And the said deponents on their oaths declare, that the said
79 steamer, at the commencement of the voyage aforesaid, was staunch and strong, and had her cargo well and sufficiently stored, and her hatches properly closed and secured; and that during the voyage they, together with the rest of the crew on board, used their utmost endeavors to preserve the said steamer and her cargo, tackle and apparel from damage or injury. And that any loss, damage or injury, which has arisen or accrued, or that may arise and be sustained, in any way or manner whatever, is solely owing to the accident and difficulties herein set forth and declared, and not to negligence, want of skill, vigilance, or exertion on the part of the deponents or any of the officers and men of the said steamer.

(Signed) M. H. TAYLOR.
E. H. GORDY, *Pilot.*
W. B. PATTERSON, *2nd Engineer.*
A. S. CHAMBERLAIN, *1st Engineer.*
P. S. TAYLOR, *Carpenter.*

Wherefore, the said M. H. Taylor, master and commander as aforesaid, doth request me to protest, and I, the said notary, at such his request, have protested, and by these presents, do publicly and solemnly protest against all and any person and persons whom it doth, shall or may concern, and against all and singular, the accidents, casualties and circumstances, already set forth in the foregoing declaration on oath, for all manner of losses, costs, damages, charges, expenses, and injuries whatever, which the said steamer and her cargo on board, and the freight by her earned, or either of them, or any part thereof, have already sustained, or may hereafter sustain, by reason or means of the foregoing premises.

This done and protested, in the city of Mobile, this third day of April, in the year of our Lord one thousand eight hundred and sixty-six.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal.

(Signed) J. S. SECOR, *Notary.*

80 *Exhibit B.*

Received, Mobile, February, eighth of Messrs. Charles Briggs & Co., an order on shipper's warehouse, for fifty-nine bales of cotton, which order is in favor of William J. Ledyard and John E. Curran; said delivery is a good delivery to us of said cotton by said Briggs & Co., to each and all of us, as consignees of cotton by steamer Belfast, of which steamer said Briggs, & Co. are the consignees and agents, and we hereby agree that said Ledyard and Curran shall receive the cotton, for and on account of each of us, and that they shall make a pro rata distribution thereof among us, according to our respective interests as consignees, owing to the fact that the marks have been disfigured, as to render it impossible to determine which particular cotton belongs to each of the undersigned. And we agree that said Ledyard and Curran shall pay, and bind ourselves, that they shall pay the freight, charges and expenses that have accrued on said cotton, from the proceeds of the cotton.

(Signed) TARLETON LEDYARD & CO.
JNO. E. CURRAN & CO.
BAKER, GRAHAM & CO.
W. H. SEINKAUF & CO.
FOSTER & GARDNER.

Exhibit M.

Amended answer filed by leave of the court, first had and obtained in the case of Boon & Co. *vs.* Steamboat Belfast, the said amended answer, by consent, to apply to two other cases pending upon the same issue, to wit, Steers & Co., and Watson & Co., against said boat.

Respondents for answer to said libel and complaint against said steamboat Belfast say, that at the time said cotton was shipped on said boat by said libellants, said boat was engaged in navigation and commerce between the city of Mobile, in the State of Alabama, and the city of Columbus, in the State of Mississippi.

81 That said boat is an American built vessel, built at Fredonia in the State of Pennsylvania, and was duly enrolled and licensed in pursuance of the laws of the United States of America, at the port of Mobile, on the 11th day of October, 1865; that on the 15th day of January, 1866, she was regularly cleared at the port of Mobile, in the State of Alabama, for Columbus, in the State of Mississippi, and was regularly engaged in navigation and commerce between the city of Mobile, in the State of Alabama, and the city of Columbus, in the State of Mississippi. That on her downward trip from Columbus, in the State of Mississippi, engaged in navigation and commerce as aforesaid, the said cotton, the subject matter of said libel, was lost, to wit: about the 25th day of January, 1866. That after said boat returned to Mobile, in the State of Alabama, she was again regularly cleared at the port of Mobile, in the State of Alabama, for the city of Columbus, in the State of Mississippi, to wit: on the 3d day of February, A. D. 1866; but before she left she was libelled in the above-stated case and others in the City Court of Mobile.

Respondents submit that said license and enrollment are still in full force and effect, and will be produced, together with certified copies of the clearances, &c., if required by this hon. court, and respondents submit that this hon. court has no jurisdiction of said cause, and pray that the same may be dismissed.

A. F. HURTEL.

Sworn to and subscribed before me by A. F. Hurtel this 21st day of July, 1866.

P. LA VERGY, *Cl'k.*

Exhibit W.

Amended answer filed, by leave of the court first had and obtained, in the case of Boon & Co. *vs.* Steamboat Belfast, and owners, the said amended answer to apply to two other cases pending upon
82 the same issues, by consent, to wit, Steers & Co., and J. Watson & Co., against said steamboat Belfast and owners.

1st. Respondents say they are informed and believe that it was agreed, and understood by and between the capt. of said boat, and the libellants at the time the said bills of lading were made, and said cotton was shipped on said boat, that if said boat was captured and robbed on her downward trip to Mobile, by an armed body of men, without any fault or neglect on the part of the officers and crew of said boat, and said cotton should thereby be lost, that such loss was to be borne by the owner of said cotton, and neither the said boat nor owners were to be liable for said loss; that said agreement would have been reduced to writing, and incorporated in said bills of lading given for said cotton, but for the reason that said capt. was led to believe, and did believe, from the representations of libellants, that a custom prevailed on said river that made it unnecessary to incorporate said agreement in said bills of lading, that is to say, that libellants represented to said capt., that in point of fact such a custom did exist on said river; and said capt. believed said repre-

sentations to be true, and received said cotton, and caused said bills of lading to be given for it as aforesaid, without incorporating in the said bills of lading as aforesaid said agreement; that this would not have been done but for said representation as aforesaid by libellant. That the Supreme Court of Alabama have since, as respondents are informed, decided in effect, that in point of fact no such custom existed, or could exist, because to establish it by proof would be to contradict the written contract. Respondents therefore insist that said contract was entered into by mistake of fact, to wit, as to the existence of such a custom, as aforesaid, at the time said cotton was shipped, and said contract was made as aforesaid, and at the time said bills of lading were given, as aforesaid.

83 2d. Respondents further answering, insist that said bills of lading were obtained by fraud and misrepresentation in this, that they are informed that said libellants, before said bills of lading were signed and delivered, informed the capt. of said boat, that a custom existed on the Tombigbee river, that when cotton was shipped on board of a steamboat, to be transported to Mobile, that if the boat should be captured by an armed body of men, and robbed while descending said river, and said cotton thereby lost to the owner, that neither the boat nor owners were to be liable for said cotton; when in truth, as they are informed, no such custom existed. That said libellants, as respondents are informed, represented to said capt. before said cotton was shipped, as aforesaid, and before said bills of lading for said cotton were signed, that such a custom, as aforesaid, did exist on said river, and that it was not necessary to incorporate it in said bills of lading, because if said boat was thus robbed, and the cotton lost to the said owners, without any fault or neglect of the officers or crew of said boat, that the said boat and the owners thereof were in no way liable for the loss, and that said capt., believing that said statement of facts to be true, received said cotton without inserting in the said bills of lading the exception of being robbed as aforesaid, by armed robbers, without any fault or neglect of the officers or crew of said boat, while said boat was descending said river as aforesaid. Respondents therefore insist that said false representation was a fraud upon said capt. and owners of said boat, and that said bills of lading were obtained by the fraud and false representation of the said libellants, which, if they had not been made, as respondents are informed, said capt. would not have received said cotton on said boat, and would not have allowed said bills of lading to have been signed or delivered to said libellants for said cotton as aforesaid.

A. F. HURTEL.

Sworn and subscribed by A. F. Hurtel, on of the respondents, before me, this 24th day of July, A. D. 1866.

P. LA VERGY, *Clk.*

84 THE STATE OF ALABAMA, *Mobile County:*

I, P. La Vergy, clerk of the City Court of Mobile, do hereby certify that the foregoing is a true and complete transcript of the record of the suits of Boon & Co. *vs.* Steamboat Belfast, of J. H. & S. B. Steers *vs.* the same, and of John Watson & Co. *vs.* the same, tried conjointly in the City Court of Mobile, sitting in admiralty.

In witness whereof, I hereunto set my hand and the seal of the court this 30th day of August, A. D. 1866.

(Signed) P. LA VERGY, *Clerk.* [SEAL.]

[One dollar state stamp.]

On the body of this transcript is endorsed the following. Filed January 15th, 1867.

PHELAN, *Cl'k.*

Copy of the assignment of errors filed in the case.

In the Supreme Court of Alabama.

BOONE & Co. *et al.*, *vs.* STEAMBOAT BELFAST. } January term, 1867.

Assignment of errors.

And said appellants now come, by their attorney, W. Boyles, and assign errors in said cases, and say:

1st. The court erred in taking jurisdiction of said several cases, not having any jurisdiction over the same, and in overruling the protest to the jurisdiction.

2d. The court erred in sustaining the several exceptions to the answers and amended answers to the several libels in said cases.

3d. The court erred in rendering decree in said several cases for the want of jurisdiction.

4th. The court erred in rendering decree in said several
85 cases upon the evidence.

5th. The court erred, as is shown by the bill of exceptions.

6th. There is error in the record.

WM. BOYLES,
Of Counsel for Appellants.

Supreme Court of Alabama.

WEDNESDAY, *February 27th*, 1867.

STEAMBOAT "BELFAST" *vs.* BOON & Co. *et al.* } 1 div., 3,316.

Came the parties, by their attorneys, and this cause having been argued at the bar, is submitted for a decision.

Opinion of the court, delivered in this cause by W. M. Byrd, Justice.

1. It seems to be the settled law of England, that the maritime lien which a shipper has upon a vessel for an injury to his goods, cannot be enforced in a court of admiralty. (Abbott on ship, 127; Birley *vs.* Gladstone, 3 M., &c., S , 205; Gladstone *vs.* Birley, 2 Mer., 401; Pierson *vs.* Robinson, 3 Swaust, 139 N.) But in this country the rule is otherwise. (Black *vs.* Barnwell, 12 How., 272; Rich *vs.* Lambert; ib., 347; The Sch. Volunteer, 1 Sumner, 551; The Gold Hunter, 1 Bl. & Howl., adm., 300; The Boston, ib., 309.)

Whether this lien attaches in fresh water navigation, or where the water is partly fresh and partly tidal? Whether on vessels employed exclusively in State or inter-State trade? Whether where it does attach, the Admiralty Courts of the United States have exclusive jurisdiction or not; and if not, in what cases it is exclusive, and in what the States have concurrent and independent jurisdiction?

These and cognate questions have been subjects of discussion
86 in this country, and upon some of which the adjudications have been variant and conflictive. Without attempting a review of the cases, we will cite the leading ones:

De Lovis *vs.* Boit, 2 Gullis, 398; Ramsay *vs.* Allegre, 12 Wheat., 614; The General Smith, 4 ib., 438; Hattel *vs.* Novin, 14 John, 273, 16 ib., 327; The Thomas Jefferson, 10 Wheat., 428; Waring *vs.* Clarke, S. How., 441, 6 ib., 334; Paroux *vs.* Howard, 7 Pet., 524; Orleans *vs.* Plabus, 11 ib., 175: The Commerce, 1 Black, 574; The Genesee Chief, 12 How., 443; Fritz *vs.* Bull, ib., 446; The Magnolia. 20 ib., 296; Pierce *vs.* Page, 24 ib., 228; Stokes's case, 22 ib., 48; Allen *vs.* Newberry, 21 ib., 244; The Niagara, ib., 7; Sturges *vs* Claugh, ib., 451; Taylor *vs.* Carryl, 20 ib., 583; Gilman *vs.* Philadelphia, 3 Wal., 713, and cases cited in the foregoing, and on brief of counsel in this cause.

In the case cited from 3d Wallace, Justice Swayne delivering the opinion of the court, says: "The States may exercise concurrent or independent jurisdiction in all cases but three:

"1. Where the power is lodged exclusively in the Federal Constitution.

"2. Where it is given to the United States and prohibited to the States.

"3. Where, from the nature and subjects of the power, it must necessarily be exercised by the national government." In that case he further says: "The power here in question does not, in our judgment, fall within either of those exceptions." That case, in its facts, was not like this, but in principle we can see no substantial difference.

In the case of Taylor *vs.* Carryl, supra, Justice Campbell, delivering the opinion of the court, quotes approvingly from Judge Story as follows: "Mr. Chancellor Kent and Mr. Randle seem to think that the admiralty jurisdiction given by the Constitution is necessarily exclusive; but it is believed that this opinion is founded in mistake. It is exclusive in all matters of prize, for the reason that at common

law this jurisdiction is vested in the courts of admiralty to the
87 exclusion of the courts of common law. But in cases where the common law and admiralty jurisdiction is concurrent, (as in cases of possessory suits, mariner's wages, and marine torts,) there is nothing in the Constitution necessarily leading to the conclusion that the jurisdiction was intended to be exclusive. * * * * But the States might well retain and exercise the jurisdiction in cases of which the cognizance was previously concurrent in the courts of common law." From these principles we conclude, that the States have the power to confer on their courts the jurisdiction to enforce a maritime lien arising within their respective limits, where, by the common law, such courts had jurisdiction of the subject-matter. At common law, a shipper, whether on a vessel engaged in foreign or international navigation, could bring a suit in the common law courts to recover damages for any injury to the goods shipped by him, for which the owner of the vessel was liable.

Seamen have a lien on the vessel for their wages earned in her service, which they could enforce in a court of admiralty, and they also had a remedy by an action in a court of common law, for services rendered, against the owner of the vessel, or the person on whose account the vessel was running; and we see no reason why the State legislature is not competent to authorize their courts to enforce that lien, even in a suit in the nature of an admiralty proceeding, without in the least interfering with the admiralty jurisdiction of the courts of the United States.

We see nothing in the case of Jackson *et al. vs.* St'm'r Magnolia, supra, in conflict with these views. That case only decides that the federal courts have jurisdiction of a marine tort, committed within a county of a State, and above tide water. It does not hold that the jurisdiction is exclusive in those courts over such torts. The Supreme Court of the United States have not been harmonious in their decisions upon this question and kindred questions; and the members of the court have, on several occasions, been nearly equally
88 divided, as in the cases of the steamer Magnolia, Taylor *vs.* Carryl, and Gilmer *vs.* Philadelphia, supra.

This court has heretofore passed upon the jurisdictional question [question] involved in the decision of this cause. (Richardson *vs.* Cleavland, S. Pon., 251; st'm'r Morris *vs.* Williamson, 6 Ala., 50; st'm'r Farmer *vs.* McCraw, 31, ib., 659.)

From these decisions, and those above cited, we deduce the following propositions: That by the maritime law a shipper has a lien on the vessel for any damage to his goods for which, by the common law, he could maintain an action; that this lien was not enforcible in a court of admiralty in England; that such a lien may be enforced in the courts of the United States having admiralty jurisdiction; that their jurisdiction is not exclusive in all cases, but the State legislature may confer on their courts the authority to enforce such lien by a suit in the nature of an admiralty proceeding in all cases where, by the common law, the State courts would have jurisdiction of the subject-matter of the suit, and the contract of shipment was made,

the damage done, and the place of delivery under the contract was to be within the jurisdictional limits of the State. We thus limit the proposition, for the reason that the facts of the case are within the limitations laid down.

Whether by the maritime law any lien exists in favor of a shipper, for an injury to his goods, against the vessel upon which they are laden, navigating exclusively the rivers of a State or country above tidal waters, although the tides flow from the ocean or bays up such rivers a considerable portion of their navigable course, is a question not necessary for us to decide in this case. If that law did not give such a lien in such a case, then it seems clear to us that the State legislature could declare such a lien, and authorize its enforcement in its courts.

We have discussed the question as though such a lien in such a case was given by the maritime law, and in that view we hold that the weight of authority sustains the constitutionality of the
89 act of 7th Oct., 1864, under which this proceeding was commenced, at least to the extent contended for by the counsel of Boon & Co. As to the other libellants, the bill of exceptions shows that "it was agreed that all three cases should be tried upon the same issue, and the case of Boon & Co. was selected as the case." If Boon & Co. are entitled to recover, then the effect of the agreement is to authorize a recovery in favor of the other appellees.

II. At common law a common carrier, who was deprived of goods by pirates, was excused from liability, if without fault himself, to the owner or consignee. Robbery was no defence. Congress has declared by an act, approved in 1820, that any person, who shall upon the high seas, or in any river where the tide ebbs and flows, &c., commit robbery, and be convicted thereof, shall be adjudged to be a pirate, and punished with death.—(1 Brigh., Dig., p. 208, §35.) This act seeks to protect the carrier by punishing the offender as a pirate, and not as he would be, if left to the State courts, as a robber, and by a heavier penalty than robbery is generally punished by the State laws.

It appears to us to be a violation of the received rules of interpretation or acceptation of legal terms and definition of crimes, to hold that the persons who robbed the Belfast, are pirates within the meaning attached to that term by the common or maritime law; and it would be equally violative of legal principles and justice to hold that a law which adjudged and punished them as pirates, would therefore relieve the carrier who had been so robbed, from a common law liability arising from the contract of shipment.

In the case of the United States *vs.* Jackalow, (1 Black, R. 487,) the Supreme Court say that it is competent for Congress to prescribe the punishment of offences committed on the high seas, in any haven or bay, or in any river where the sea ebbs and flows, although within the limits of a State. Without questioning at this time the doctrine thus broadly laid down, still we do not see how Congress can by a criminal law change or modify the civil lia-
90 bilities of persons contracting within a State. If so, it would

seem that Congress might be declaring that larceny or embezelment on any vessel, by any officer thereof or other person, upon the high seas, or any river where the tide ebbs and flows within the limits of a State, was piracy, relieve the carrier from liability for goods or money thus stolen or embezzled. A criminal law should not be construed in derrogation of civil liabilities imposed by the common law and by contract, nor should it be given an effect beyond the legitimate objects of the law, the prevention of crime, and the punishment of the offender.

The counsel for appellant contends, that the court should not have sustained the exceptions to the amended answer set out in the record Exhibit W, to the bill of exceptions. The exhibit or the bill does not show what the exceptions were; if, therefore, any valid exception could have been taken, we must presume, in support of the ruling of the court, that it was taken. The counsel for appellees insist that this amendment is repugnant to the original answer, and that, therefore, the court properly sustained the exception to it. Such an objection to the filing of the amended answer might have been well made, but after the court had allowed the party to file it, such an exception, under the liberal system of pleading tolerated in modern times, and by our code, would come too late, and ought not to prevail.

The first pl a in the amended answer, is founded upon an alleged mistake in the contents and execution of the bill of lading. Such a mistake, if available in any court, cannot be invoked by the appellant, as a defence to the libel in the form here pleaded. It is averred that the "contract of shipment was entered into by mistake of fact, to wit: as to the existence of such a custom," &c. A mistake made in the contents of a written contract cannot be taken advantage of by way of defence in a court of law or equity; but to avail himself of it, the party must become the actor in the
91 court of equity for the reformation of the contract.

Hogan *vs.* Smith, 16 Ala., 602.; vid. 1 Story, Eq. In., §§§ 111, 116, 120, 6, 8, 137, 146, 9, 150, 3, 8.

The second plea sets up fraud and misrepresentation of the several libellants in procuring the execution of the bill of lading; and it is therefore contended by the counsel for appellant, that no recovery can be had on the bill of lading, or in this proceeding.

A question of some intricacy is presented by the contents of this plea. The law, as to the effect of fraud, upon all contracts, is clear and well defined, and we shall, in the course of this opinion, refer only to so much of that law as is applicable to the contents of this plea. In passing upon the matters set out in the plea, we will refer to two reflections which claim some notice; one is, that the captain of a steamboat, engaged in navigating a river, should be deceived by the representations of others as to the existence of a custom which vitally affected the liabilities of the vessel, or its owners, in whose service he was employed; and the other is, that he should so readily have declined from putting a clause in the bill of lading, upon a representation that the custom of the river rendered it

unnecessary. If such were the fact, why should the shippers have objected to its insertion. The very objection by them was sufficient to have put the captain on his guard, and made him insist on putting in the bill of lading the exception of loss by robbery; for if such exception had been established by custom, the shippers could not have been injured by its insertion if such a custom could be set up against the common law, which this court has held could not be done. And here lies the difficulty of the case. Taking the averments of the plea to be true, it seems to us, that the representations made related to both matters of fact and law. As to the latter, the captain in contemplation of law, was not ignorant; and as to matters of fact, whether he knew them to be true or not, he seems to have been negligent in acquiring a knowledge of a custom affecting
92 the business in which he was engaged; and as to the existence of such custom, if it existed, as to which he ought to have been as well acquainted as the libellants, if not better; and there was no relation existing between parties which authorized the captain to rely upon the representations alleged to have been made without injury. Ordinarily a false misrepresentation of a matter of law is no ground for an action or relief.—(Martin *vs.* Wharton, 38 Ala. 637.) A misrepresentation of a matter of fact may be. A custom to have the force and effect of law must conform to all the rules laid down in the books, and though its existence may be a question of fact in one sense, yet its effect is matter of law; and as to the latter, it is a trite maxim, ignoranta legis neminem excusat; nor can a fraudulent misrepresentation of the effect of law, upon a given state of facts, ordinarly afford any right to relief, or any defence to an action.—(Jugan *vs.* Poulmin, 9 Ala., 684; Cowles *vs.* Townsend, 37 ib., 77; Hogan *vs.* Smith, supra. 1 Story, Eg. In., §§191, 7, 9, 200a; 2 Kent, 484, 85, 4th Ed.)

A party who sets up a fraudulent misrepresentation of facts as a ground of relief or defence, must not be guilty of laches; and if it appears that he did not use ordinary diligence in acquiring a knowledge of the facts, and that he did not stand in a relation to the party making the representations, which authorized him to rely upon them without inquiry, he cannot avoid himself of such representations as a ground of relief or defence. No such relation is set up or insisted on in this case, and the captain acted on the representations alleged to have been made, improvidently, if not recklessly, in a matter as to which he ought to have been as well informed as the libellants, and the very assertion that they made as to the custom, and objection to its insertion in the bill of lading, should have put the captain on the inquiry. Taking all these views together, we are of opinion that the plea under consideration is insufficient and defective, and the court therefore properly sustained the exceptions thereto.—(Vid. authorities last cited.)

93 IV. The record does not purport to set out all the evidence, and if the evidence set out was not sufficient, we would presume that there was sufficient introduced to authorize the decree of the court below.

The foregoing disposes of all the questions raised, and so thoroughly argued by the learned counsel for both parties at the bar and in writing; and not being able to detect any error assigned upon the record, the decree of the court below must be affirmed with costs.

Supreme Court of Alabama.

STEAMBOAT "BELFAST" *vs.* BOON & CO. *et al.* } 1 Div. 3,316.

THURSDAY, *June* 13, 1867.

Came the parties by their attorneys, and the record and the matters assigned for error therein being argued and examined, it appears that the appellees, Boon & Co., and the other, the libellants in the court below, and appellees in this court, assert the legality and validity of their libels, and proceedings thereupon, in the said City Court of Mobile, under and by authority of the act of the general assembly of the State of Alabama, entitled an "Act to amend the admiralty laws in this State," approved 7th of October, A. D. 1864; and that said appellants insist that said authority, so alleged by said appellees, and said statute of the State of Alabama, are repugnant to the Constitution of the United States. Article one, section eight, paragraph three; and also, article three, section two, (2,) and the laws of the United States in pursuance thereof; and that the decree of the court below is in favor of the validity of said authority so claimed by said appellees, and of said statute of the State of Alabama; upon consideration whereof, and [and] of the argument of counsel, it seems to the court that in the record and
94 proceedings of said City Court of Mobile there is no error.

It is therefore considered by the court that said decree of said City Court be in all things affirmed, and that said appellees recover of said appellants, and of Charles Briggs and Frank David, sureties, the costs of this court and City Court.

Upon application for a rehearing, the following opinion was delivered by Byrd, J.:

Since writing the foregoing opinion the case of the steamboat A. D. Hine *vs.* Trevor, decided at the December term, 1866, of the Supreme Court of the United States, and in manuscript, has been brought to our notice by appellant's counsel, and he insists earnestly that it is decisive of this case. We were not aware that such a decision had been made; and we consider it as settling clearly some of the questions to which we refer in our opinion as being unsettled. And, upon the facts of that case, there can be no doubt of the correctness of the result obtained by the court. The main fact in that case, which was decisive of the question of the jurisdiction of the courts of Iowa, is that a State can neither confer a lien or enforce a right arising under the maritime law of the United States, or by statute of a State, where a marine tort takes place, and out of the

limits of the State, and in another State. That was a question involved in the decision of that cause, and that decision must be the law of this court.

Mr. Parsons, in his work on maritime law, says: "In fourteen of our western and southern States actions may be brought against vessels by name. * * * But in these States it seems that actions of this sort will not be sustained under their statutes, if the cause of action arose out of the State." This view would have been decisive of the case of the A. D. Hines, supra. Mr. Parsons further
95 says, (in vol. 2, p. 570,) "the act of 1845, relating to the lakes and navigable waters connecting the same, gives no jurisdiction over the domestic commerce of a State; that is, over contracts for carrying goods between ports and places in the same State," and cites the case of Allen *vs.* Newberry, 21 How., 244. Mr. Parsons is speaking of the jurisdiction of the United States courts as Courts of Admiralty in the above extract. In the case of Allen *vs.* Newberry it is decided that the jurisdiction of those courts does not extend "to a case where there was a shipment of goods from a port in a State to another port in the same State, both being in Wisconsin." Nelson, J., delivering the opinion of the court, says: "In the case of Gibbon *vs.* Ogden, 9 Wheat, 194, it was held that this power did not extend to the purely internal commerce of a State," and quotes the following extract from the opinion of Chief Justice Marshall in that case: "The genius and character of the whole government seem to be that its action is to be applied to all the external concerns of the nation, and to those internal concerns which affect the States generally, but not to those which are completely within a particular State, when they do not affect other States, and with which it is not necessary to interfere for the purpose of executing some of the general powers of the government. The completely internal commerce of a State then," he observes, "may be considered as reserved for the State itself." Justice Nelson, in the same case, quotes from the case of the New Jersey Steam Navigation Company *vs.* Merchants' Bank, 6 How., 392, as follows: "Contracts growing out of the purely internal commerce of the State, &c., are generally domestic in their origin and operation, and could scarcely have been intended to be drawn within the cognizance of the federal courts." The case of Allen *vs.* Newberry is "on all fours," with the case under consideration. In that case the boat was running between a port in Wisconsin and one in Illinois, and in the case before us the boat was running between a port in Mississippi and one in
96 Alabama, and in both cases the goods were shipped at a port in one State to be delivered in another port in the same State.

In the case of the A. D. Hines the court has not considered the case of Allen *vs.* Newberry, and it was not necessary to do so, for it does not lie within the same field of maritime jurisdiction, marine torts, and contracts of affreightment. To reverse this case we would have to disregard the case of Allen *vs.* Newberry, which we are not disposed to do, but will leave it for the consideration of the Supreme Court of the United States, whether the case of the A. D. Hine is

in conflict with that case. We do not think that there is any conflict. If in this we are mistaken it will give that court an opportunity to settle another question as to the admiralty jurisdiction of the federal courts. The distinction we make may be thus stated. Neither by the common law, nor the maritime law, had the shipper any lien on a vessel for goods laden on and lost by it where the vessel was navigating rivers or waters within the body of a county, and we cannot see how the grant by the federal Constitution of all admiralty and maritime jurisdiction to the Circuit Court of the United States can create a maritime lien in favor of a shipper, where the contract of affreightment is made, and the goods are shipped and are to be transported to a place within the body of a State. We can find no authority for such a doctrine. It is unnecessary to consider whether by the maritime law of Europe a shipper have such a lien against vessels navigating the Seine, the Danube, the Rhine, or Vistula, without going out to sea, or beyond the limits of the kingdoms
97 within which they respectively have their course.

For those kingdoms, or most of them are governed by the civil law, and not by the common law, and it is well settled that the common law of England is the common law of this country, so far as it is accommodated to, or modified by our institutions; and to hold that a shipper's lien exists by the maritime law on a vessel running exclusively the rivers of a state, would be a confusion of terms and ideas, wholly unknown to and unrecognized by the common law, or the maratime law of England or this country. We admit that it may be competent for Congress to declare such a lien, under the grant of power to regulate commerce between the States. But we are not aware that Congress has ever done so, and in the absence of Congressional legislation, it is competent for the States to declare such a lien to exist upon vessels running within their limits, upon contract of affreightment made within their jurisdiction and to be executed within the same. By way of illustration: take the case of a steamboat running between Rome in Georgia and the Ten Islands in the Coosa river, in Alabama, on a portion of that stream which has no navigable connection with tide water; can a maratime lien in favor of a shipper on such a boat be said to exist by the maratime law, or any act of Congress? If so we are not aware of it. If, as in the case of Allen *vs.* Newberry, no such lein is declared in such a case, by the act of Congress of 1845, on the north western lakes and rivers, we cannot see how such a lien exists under the act of 1789, or by the maratime law; besides if the act of 1845, did not declare such a lien to exist on those lakes and rivers, still the act of 1789, and the maratime law were then in full force throughout the whole extent of our country, and if such a lien did exist under the latter act, or by the
98 maratime law, of which the admiralty courts of the United States had exclusive jurisdiction, the court would have, in the case of Allen *vs.* Newberry, so declared. All the decisions from the existence of the government of the United States Courts, have uniformly held that such a contract of affreightment as was made in this case was not within the jurisdiction of the United States Courts, and all the State Courts and legislatures have so held, and under the adju-

dications of the Moses Taylor and A. D. Hines, we do not feel that we are authorized to depart from them. We do not consider those cases as touching the point of this, or as overruling Allen *vs.* Newberry. We concede that the question has perhaps become somewhat involved in difficulty by those cases, and even if we thought they had rendered the question doubtful, it might be our duty, if such a practice prevailed, to certify it to the Supreme Court of the United States as novel and difficult; and not being able to do so to decide the cause as we have done, so as to permit the only party who can to appeal to that final tribunal; and this case raises points which perhaps will enable that court to lay down a rule which will finally settle the questions left open by the case of the A. D. Hine. If the State had the power to give a lein by law to a shipper on a vessel in such a case of affreightment as this, then we hold that the State could also confer the jurisdiction upon their courts to enforce such a lein, and that they could do so by a process of foreign attachment or by a proceeding in a common law court in the nature of an admiralty proceeding. We can see no substantial reason why one form is more objectionable than the other. For whilst we concede that the States have no authority to establish courts of admiralty, we cannot see why the States could not adopt admiralty forms and proceedings, where applicable, to try civil causes, preserving, as the statute does in this
99 case, the right of trial by jury.

We therefore adhere to the conclusions attained in the foregoing part of this opinion, and modify the reasoning thereof to the extent it has been overturned by the case of the Moses Taylor and the A. D. Hines, and no further.

Supreme Court of Alabama.

STEAMBOAT BELFAST *vs.* BOON & CO., *et al.* } 1 Div. 3,316.

FRIDAY, *June 14th* 1867.

The application by the appellants for a rehearing in this case, having been fully examined and considered by the court, it is ordered by the court that the same be overruled.

Supreme Court.

THE STATE OF ALABAMA:

I, John D. Phelan, Clerk of the Supreme Court of the State of Alabama, do hereby certify that the foregoing ninety-nine pages contain a true, full and complete transcript of the record and proceeding in a cause pending in said Supreme Court of the State of Alabama, wherein the steamboat "Belfast" is appellant, and Boon & Co., J. H. & S. B. Steers, and John Watson & Co., are appellees, as the same remains of record in my office.

In testimony whereof, I have hereto set my hand and affixed the seal of said Supreme Court, this 17th day of August, A. D. 1867.

[SEAL.] JOHN D. PHELAN, *Clerk.*

[2 Dollar State Stamp.]